THE
GOVERNMENTAL SYSTEM OF PERU

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PREFACE.

In undertaking the preparation of a monograph on the government of Peru perhaps the most difficult problem that faces the investigator is the necessity of keeping within the restricted boundaries of the subject. Innumerable fascinating but irrelevant questions of historical fact and fancy continuously seek to divert and distract his attention. This storied land of the Incas, with its monuments and its memories, its ancient civilization and its fabulous wealth, its bloody conquest by the immortal Pizarro, whose bones still lie in the great cathedral of the City of the Kings, does not submit itself readily to the consideration of the somewhat prosaic problems of constitutional government. Somehow, the questions of republicanism and democracy seem wholly out of place here; yet in spite of its glorious background of picturesque autocracy, Peru, like its sister states of South America, has adopted the republican form of government, and has striven courageously for more than a century to govern itself in accordance with the formulæ of democracy.

At first glance one is tempted to believe that a country which has rearranged, revised, or rewritten its constitution 16 times in slightly over 100 years has adopted a form of government somewhat alien to its needs. However, when it is noted that the first 9 of these instruments were prepared within the first 15 years of the republic's existence, and of the other 7, 4 were in reality the same constitution of 1860 readopted or very slightly modified, it becomes evident that the instability after all is somewhat more apparent than real.

However, certain conditions are found in Peru which to a considerable extent set her apart from her sister republics and have made the establishment of democratic government, as understood in the United States or Great Britain, a very difficult if not almost impossible achievement. In the first place, Peru was undoubtedly, of all the South American States, the most closely related to Spain. Many of the leading Creole families of Lima kept in very close touch with their kindred in Spain, and their Castilian pride of birth strengthened their love for an autocracy in which they had long played the leading parts. So it was that the seeds of revolt which sprang up so quickly in Venezuela, Argentina, Chile, and Mexico did not find the soil quite so fertile for germinating in Peru. The Fabian-like tacties of San Martín in liberating Peru were eminently suitable to the situation as he found it. When with this condition is coupled the fact that even to-day the Indians in Peru far outnumber the whites, and if the mestizos be included, the pure-blooded Spanish are in a very considerable minority, the tendency towards

oligarchy or even autocracy can easily be understood. The Spanish system in America, functioning at its best in Peru, did not afford the same training for representative government as did, for example, the British government in either Massachusetts or Rhode Island. In fact, both Bolívar and San Martín realized the the people were not ready for undiluted democracy; the former preferred a sort of elective life monarchy, while the latter felt that an aristocratic republic, which after all meant an oligarchy, was the most feasible form.

Nor can the geographical conditions in Peru be disregarded. The Andes, which have been so beneficent to Peru in their endowments of mineral wealth, have on the other hand cut the state up in such a fashion and made communication so difficult, that the problems of a centralized government are both great and exceedingly complicated. A real public opinion, representative of the nation as a whole, is almost impossible as long as local jealousies continue to arise. A close control on the part of the central government is practically out of the question, but the conditions are not yet such that a high degree of local autonomy would be possible. Furthermore, the sparseness of the population, except in a few large cities, and the fact that the cities themselves, with the exception of Lima and Callao, have very little in common, increases the difficulty of the problem. Finally, the violent contrasts of climate, soil, vegetation, and races—the desert facing the jungle, snow-crested peaks overlooking superheated lowlands—this "fixed variety," as Prescott calls it, favors disintegration and heterogeneity. According to the great French geographer Elysée Réclus, this lack of cohesion constitutes a great danger to the Peruvian state.

A careful study of the various Peruvian constitutions, and particularly a comparison of the constitution of 1860 with that of 1920, make apparent the real effort made by Peruvian statesmen to solve the problem. Nevertheless, the manner in which the government actually functions, as contrasted with a strict interpretation of the organic law of the state, shows perhaps even more clearly that conditions and facts are stronger than the most carefully fashioned theories.

In making this study it seemed wise, first of all, to attempt a brief sketch of the constitutional development of Peru because of the continuous efforts that have been made in this state to secure an organic law suitable to its peculiar problems. With this as a background, an effort was made to obtain information as to the reasons for adopting the present constitution and the results which are expected or at least hoped for from its operation. The analysis of the constitution and the description of its actual working are based as far as possible upon observation and consultation with those in a position to explain the workings of the governmental machinery.

I am keenly aware that no one can hope to comprehend fully the entire governmental system of a foreign country in the short period of 6 months;

but the stranger does have the advantage of an unbiased viewpoint and of a freedom from political inhibitions. I have attempted to present the facts as I found them, and if my conclusions are false or erroneous I alone am responsible. I shall beg only this indulgence: whatever be the judgment as to the value of the study, I hope that all will agree that it has been made by a sincere friend of Peru.

In obtaining this information I have received the cooperation of a large number of Peruvians, and I wish to express my deepest appreciation for the opportunities afforded me and the very courteous treatment accorded by all those from whom I sought information and advice. I should like to mention all by name, but perhaps I may be permitted to thank collectively those who aided me for their great help and kindness. I can not refrain, however, from expressing my deepest obligation to Señor Fernando Ortiz de Zevallos, whose kindness and courtesy in assisting me in every way was constant and unfailing, and to Doctor Pedro Zulen, who gave me unreservedly the facilities of the Library of San Marcos, together with his own invaluable knowledge of sources and materials. I also wish to thank Doctor Alberto Salomón for his interest and assistance in my work and Doctor César Elguera for his many courtesies. And I particularly wish to express my most sincere and grateful appreciation to Doctor M. V. Villarán, who not only read all the manuscript and gave me the benefit of his wide knowledge and experience, but aided me further by his friendly encouragement and his sympathetic appreciation of the problems of the task.

I should be most ungrateful if I failed to thank Doctor L. S. Rowe for the facilities which he afforded me to carry out my investigations, and the Carnegie Institution of Washington, whose generosity made the study possible. I also owe a debt of gratitude to Ambassador Miles Poindexter and Consul-General Claude Guyant, whose advice and assistance were always at my disposal. I am further indebted to Professor Victor J. West, of Stanford University, who read the entire manuscript and made many valuable suggestions and improvements.

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CONTENTS

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CHAPTER I.

CONSTITUTIONAL DEVELOPMENT OF PERU.

Under the Inca regime, the government of Peru was an autocracy of the most absolute type, one which left almost no initiative to the individual,[1] and when Pizarro made his conquest, the great conquistador merely substituted his own authority for that of the Inca Atahualpa, the unfortunate victim of his treachery. The Spanish successors to Pizarro ruled in the same autocratic fashion, and except for the ill-starred revolution of Tupac-Amaru in 1788, Peru accepted and was apparently satisfied with its governmental system. But the American revolution opened a breach in the walls of autocracy in the new world, and the French revolution extended the breach to Europe. Conversant with the fascinating theories of Montesquieu and Rousseau, with the doctrine of the rights of man before them, and with the successful exemplification of democratic theories in the United States, it is not surprising that a republican form of government seemed to the South American patriots as the open sesame of happiness for the newly emancipated peoples. Therefore, when the battle of Ayacucho, fought in the highlands of Peru in 1824, gave the South American states their freedom from European control, every one of the states except Brazil, for better or for worse, adopted forthwith the republican form of government.

Peru took its first step on the ladder of constitutional government on February 12, 1821, when San Martín, although not yet in full control of the country, issued a *reglamento provisional* by his authority as protector of the country. This provisional instrument, consisting of 20 short articles, extended only to the four provinces of Trujillo, Huailas, La Costa, and Tarma. As its introduction declared, this decree "established the demarcation of the territory which the liberating army of Peru actually controlled and the form of administration which should exist until there should be constituted a central authority by the voluntary action of the free people."[2] Under the circumstances it could be little more than a military despotism.

About 8 months later, October 8, 1821, when the Spanish army had evacuated Lima and General San Martín was in control of the city, the

[1] D. Agustin de la Rosa Toro in his *Historia política del Perú*, p. 51 says: "The Peruvians were submitted to a blind dependence which took away all individual liberty, reducing them to cogs in a well-regulated machine; one which limited their property, giving them only the necessities of life, one which permitted few private pleasures, limiting both the time and deed, and one which kept them in ignorance, so that their submission might be the more certain and their occupation limited to the trades of their fathers."

[2] For text, *vide* J. F. Olivo, *Constituciones Políticas del Perú* (Lima, 1922), pp. 5–10.

protector issued an *estatuto provisional* for the better government of the free departments until a permanent constitution should be adopted. One paragraph in the introduction to this document gives evidence both of the political idealism and the sound practical judgment of the protector.

> So long as there are enemies in the country, and until the people form the first notions of self-government, I shall exercise the directive power of the state, whose attributions, without being the same, are analogous to that of the legislative and executive power. But I shall abstain from ever interfering with the solemn exercise of the judicial functions, because the independence of the judiciary is the one and true safeguard of a people's liberty.[3]

This *estatuto* was in reality an enlargement of the former *reglamento provisional,* and was drawn somewhat in the form of the constitutions of to-day. Consisting of 10 parts, the first section established the Roman Catholic Church; the second and third laid down the powers of the executive and his relations with the administration; the fourth covered the organization and functions of a council of state; the fifth and sixth were concerned with the government of the departments and municipalities; the seventh constituted an independent judiciary; the eighth was a short bill of rights; the ninth covered citizenship; and the last provided that this *estatuto* should remain in force until Peru was wholly independent, when a constitutional convention should determine what form of government should be adopted. Two additional articles promised that Peru would recognize all debts contracted by Spain, except those hostile to American independence, and that the protector would swear to maintain the constitution.

This instrument served as the organic law of Peruvian government until after San Martín had his famous conference with Bolívar at Guayaquil. Although San Martín realized that his government was a dictatorship pure and simple, in spite of any self-imposed constitutional restrictions, there is abundant proof to the effect that he hoped to establish a constitutional monarchy just as soon as the conditions would warrant it. In fact, on December 27, 1821, he issued a call for the people to elect representatives to a constituent congress which should assemble the following May. He also appointed a commission of 7 members to draw up the project of a constitution and to determine the manner of holding the elections.[4] At one of his conferences with Bolívar, San Martín is reported to have said that owing to various reasons, such as the backwardness of the Spanish colonies, the diversity of races, the aristocracy of the clergy, and the military spirit of the masses, he was inclined to favor a constitutional monarchy for Peru in preference to a republic. Bolívar, however, pointed out to him that after a dozen years' struggle

[3] J. F. Olivo, *op. cit.*, p. 14.
[4] M. Nemesio Vargas, *Historia del Perú Independiente* (Lima, 1903), vol. 1, p. 211.

for a republican form of government, it would be very difficult to rechart the course.[5]

When it became evident to San Martín that Bolívar would brook no rival, and no effective cooperation seemed possible, the protector of Peru returned to Lima and issued a second call for the congress, which had not yet met owing to the uncertain political conditions in the country. The congress met in Lima September 20, 1822, and before the 51 delegates assembled, San Martín resigned his power as protector, and shortly afterwards voluntarily exiled himself, an act of political abnegation unique in history.

The congress now proceeded actively to the consideration of the bases of a constitution for the state. There was material in abundance from which to select, both in theory and in fact. The various constitutions of France during the revolutionary period, particularly those of 1791 and the year III, made a particular appeal. The constitution of the United States, already in successful operation for over 30 years, unquestionably had some little influence. The constitution of Venezuela of 1811 and the constitution of Colombia of 1821 were also available and their provisions considered. But above all, the constitution of 1823 was the product of the revolutionary ideas then prevalent, having as their primary source the *social contract* of Jean Jacques Rousseau. Ardent in their demands for popular sovereignty, the makers of the constitution were equally insistent that this sovereignty should be vested in the people's representatives in parliament.[6]

The questions of a single versus a plural executive, the separation of powers, a unicameral or bicameral legislative body, were threshed out just as thoroughly as these same questions had been in our constitutional convention of 1787. But as the conditions were much more similar to those in the United States which produced the articles of confederation than to the period which produced the constitution, so the instruments known as the *Bases de la Constitución Política de la República Peruana*, promulgated December 17, 1822, by the supreme *junta gubernativa* under the presidency of General La Mar, and the *constitución política de la república Peruana*, generally known as the constitution of 1823, were more similar to the articles of confederation in the framework of government than to the American constitution of 1789.[7]

The congress so recently freed from the dictatorship of San Martín was very unwilling to establish strong executive powers and intrust them to a single man, even though the Spaniards had still to be driven from strong positions. But a short experience with a *junta gubernativa*

[5] M. Nemesio Vargas, *Historia del Perú Independiente* (Lima, 1903), vol. I, p. 303. For comment on San Martín's objections to the republican form of government see also M. F. Paz Soldan, *Historia del Perú Independiente* (Lima, 1868), vol. I, pp. 266–267.

[6] See the opinion of Dr. Victor Maúrtua, quoted by A. B. Loredo, *Bosquejo sobre la evolución política y jurídica de la época Republicana del Perú.* (Lima, 1918), pp. 177–180.

[7] For text of both instruments see J. F. Olivo, *op. cit.*, pp. 27–70.

of 3 members proved its utter futility, and the constitution provided for a president to be elected for 4 years and not to be reelected for two terms consecutively. The president's powers were limited in every possible way so as to make him subservient to the congress. He could neither initiate legislation nor call the congress into special session to consider important legislation. Neither could he, under any circumsances, defer or suspend the sessions of the congress. Although in command of the armed forces, he could not despatch a soldier to quell an insurrection without the consent of the congress or the senate. While the parliamentary system of government as we now understand it was then unknown, it is interesting to note that all acts of the administration had to be signed by the minister concerned. Finally, the president was elected by the congress from names submitted by the senate.

Under the constitution of 1823, although we find both a senate and a congress, the system must be called unicameral, for the legislative power was vested exclusively in the congress, which was to meet annually. The senate or *senado conservador* has been aptly called a "perpetual sentinel of the executive power." Its members were elected for terms of 12 years, one-third retiring every 4 years; its principal functions were to watch over the observance of the constitution and laws, to convoke the congress in special sessions in times of emergency, and to consult with the executive upon all important questions of government.

An independent judiciary was created, holding office for life or good behavior, consisting of a supreme court, superior courts, and judges of first instance. The constitution explicitly provided for the separation of powers, and also that the exercise of the judicial power should be vested only in those tribunals created by law. A short bill of rights protected the life, property, and civil liberty of the individual, freedom of the press, and equality before the law. Religious freedom was not provided; in fact, the practice of any but the Roman Catholic form of faith was specifically prohibited.

Sections were devoted to the government of both provinces and municipalities, and here the French influence is clearly seen. The system was extremely centralized and by means of prefects, intendants, and governors a very complete control could be exercised by the central government.

The constitution was promulgated November 12, 1823, but conditions were not yet suitable for constitutional government. The *junta* had failed miserably, and at the demand of the army the congress selected Colonel Riva Agüero to act as president. Constantly at odds with the congress, he was not even a successful stop-gap, and with the advent of General Sucre to supreme command of the army, President Riva Agüero became a mere figure-head, and was finally forced out. The Marquis of Torre Tagle succeeded him, but the

country demanded Bolívar, and when the liberator came in September, he was given full authority to prosecute the war.[8] Even before the constitution was promulgated, a law was passed declaring inoperative those parts which were incompatible with the powers granted to the liberator and with those necessary to the successful prosecution of the war of independence. In fact, in the exercise of his dictatorial powers, Bolívar had various decrees passed which provided in substance that the fundamental law should be observed only so far as it should be compatible with the best interests of the state.[9]

Although the constitution of 1823 was in operation only from November 12, 1823, to December 9, 1826, and then subject to the will of Bolívar, it deserves the rather extended examination we have given it as being the first formal organic law of the Peruvian state drawn up by a constituent assembly under a popular mandate. Showing clearly the influence of French thought and theory, it indicates that its makers failed to grasp the fact that the conditions were not yet ripe for real popular government. During the world war it was proved conclusively that in times of emergency a democracy must become temporarily an autocracy to achieve efficiency. The United States, Great Britain, and France were all forced to recognize this fact. Yet the makers of the constitution of 1823, in spite of the chaotic conditions which cried aloud for the strong hand of an executive with full powers, refused to face the facts. They preferred to build an ideal state upon the theories of the rights of man, and run it by the complicated machinery of representative government and the "check and balance" system. The results were bound to be disastrous from the standpoint of successful constitutional government. It is remarkable that hope of its final success persisted in spite of continued failures.

After the battle of Ayacucho had put an end to Spanish resistance, Bolívar could give free play to his political ideas.[10] The conference of Panama, the *constitución vitalicia*, and the federation of Peru, Colombia, and Bolivia, were substantial evidences of his ability to put his ideas into operation, as well as of the breadth and boldness of his political conceptions. The constitution of 1823 did not fit in with his plans for the government of Peru. He had already drawn up a rather remarkable document known as the *constitución Bolivariana* and had given it with the name Bolivia to Upper Peru. Upon his return to Peru, finding the Peruvian congress amenable to his wishes,

[8] For detailed accounts of this period see N. M. Vargas, *Historia del Perú Independiente* (Lima, 1903), vol. II, pp. 3–155; Sebastián Lorente, *Historia del Perú desde la Proclamación de la Independencia* (Lima, 1876), vol. I, pp. 107–239; and the scholarly work of M. F. Paz Soldan, *Historia del Perú Independiente* (Lima, 1868), vol. II, pp. 1–246.

[9] See the very scholarly article by Dr. M. V. Villarán on the constitution of 1823 in *El Comercio* of Lima, Nov. 12, 1923.

[10] They have been summarized by Dr. Villarán in the *Revista Universitaria*, 1916, vol. II, pp. 429–457.

he had little difficulty in imposing this same instrument with a few modifications upon Peru. It is generally known as the *constitución vitalicia* of Bolívar, and as it remained in force only about 2 months, it had little effect upon Peruvian political development. It was said in some places that the festivals decreed upon notice of its acceptance were interrupted by the news of its repeal.[11] In form it showed strongly the influence of the French constitution of 1799, although instead of a consulate we find a presidency with a life term granted to Bolívar. Apparently Bolívar had forgotten completely his advice to San Martín that the people would never accept a monarchical system of government. Upon the repeal of the *constitución Bolivariana*, the constitution of 1823 was put into effect temporarily until a new constitution could be formulated.

The opposition to the *constitución vitalicia* was particularly strong in Lima, and the nationalists practically forced Santa Cruz, president of the council of government in the absence of Bolívar, to call a new congress with constituent powers. This congress, after 9 months' labors, promulgated the constitution of 1828, which is worthy of some attention, since it is the constitution which may be said to be the point of departure for all those which have followed. Furthermore, as Dr. Villarán has pointed out, this constitution was the first that found the country in a situation where a real attempt might be made to establish a stable political régime.[12]

This constitution bears a much greater similarity to the constitution of the United States than any of its predecessors; in fact, in many respects it is an almost exact counterpart. We find a president elected for 4 years by an electoral college which must give him a majority of the electoral votes or else the election is thrown into the congress. He is responsible for all the acts of his administration; he may call congress in special sessions; he delivers an annual message regarding the state of the republic; he is in supreme command of the army and navy, makes treaties of peace with the consent of the congress, receives foreign ministers, appoints ministers, consuls, and other high government officials with the consent of the senate, and appoints and removes the ministers of state at will. A vice-president acts as chief executive in case of the death, absence, or disability of the president. The congress is a bicameral body consisting of a chamber and a senate, the latter elected for 6 years, with one-third going out of office every 2 years. The congress must meet at least once a year, and each house is empowered to have jurisdiction over the qualifications of its members and the rules of its sessions. The persons of members are inviolable, and the members can not be held responsible for any utter-

[11] N. M. Vargas, *Historia del Perú Independiente*, vol. III, p. 246.

[12] *La Constitución de 1823*, *El Comercio*, Nov. 12, 1923. For its text, see J. F. Olivo, *op. cit.*, pp. 109–146.

ance made in the course of their parliamentary duties. The congress is given power to make, modify, and annul laws, to provide an army and navy, declare war, lay taxes, (the initiative resting in the lower house), coin money, regulate foreign and domestic commerce, and in case of an emergency to grant extraordinary powers to the president. An independent judiciary is created consisting of a supreme court, superior courts, and judges of first instance.

One of the noteworthy features of the constitution of 1828 was its elaborate bill of rights. In addition to the ordinary guarantees such as freedom of speech and press, protection of life and property, inviolability of the home, and equality before the laws, it guaranteed freedom of movement, inviolability of the mails, equal rights to employment according to talents, and impartiality of taxation; it forbade the confiscation of property except for public purposes, and then with due compensation, and it abolished all privileges and titles. Another original and interesting feature was the provision that the constitution was to remain unchanged for 5 years, and then a constitutional convention was to be called to examine and make any necessary changes. However, if before that time urgent necessity required it, the congress was allowed, under elaborate safeguards, to advance the date. A radical change from the constitution of the United States in regard to the machinery of government was the establishment of a council of state of 10 senators, elected by a vote of both chambers to sit during the recess of the congress. Its duties were to watch over the observance of the constitution and laws, consult with the president in important matters of government, and carry out certain other functions specially designated.

Under the constitution of 1828 the government was actually as far as the organic law could make it a representative republican type. The principal difficulty was the lack of an electorate able and willing to meet the demands put upon it. Except among a very small percentage of the population, there was complete political apathy. Even among the so called intelligentsia there was such a lack of information concerning political matters that the Peruvian historian Vargas declares that to speak even to a learned man of those days of the theory of Malthus or the penal system of Beccaria or the idealism of Descartes would have been as useless as to-day to speak to a clergyman concerning Father Nuremberg or to a lawyer concerning Samuel Romilly or to a silversmith concerning Benvenuto Cellini.[13]

Although the constitution of 1828 remained the organic law until 1834, it must be confessed that during this turbulent period military law constantly took precedence over constitutional law. The government of General La Mar intervened in Bolivia, thus bringing about

[13] M. N. Vargas, *op. cit.*, vol. IV, p. 120.

a war with Colombia. The defeat at Portete caused the downfall of La Mar and a revolution in Lima. The fifth Peruvian congress met during this period and violated the constitution by electing General Gamarra provisional president instead of naming the president of the senate. No congress met during 1830, owing to pressure exerted indirectly by General Gamarra. In 1833 the constitution of 1828 was, by its own terms, to be revised, but a presidential election occurring in that year, and neither candidate having obtained a majority, the congress was forced to elect a president. It elected Orbegoso, but his rival, General Bermúdez, aided by General Gamarra, dissolved the congress and seized the presidency. Another revolution followed, the constitutionalists emerged victorious, and Orbegoso resumed his presidential duties.

The revolution led by General Bermúdez was completely put down by the end of April 1834, and 2 months later, June 10, 1834, a national convention promulgated a new constitution in place of the constitution of 1828.[14] A careful comparison of the two instruments makes it clear that they are substantially alike. In the framework of government and in the principal functions the two constitutions are identical. Perhaps the most noticeable change is the complete omission of the *juntas departamentales*, in order to afford greater centralization to the government authority. Certain changes were also made in regard to the executive. Where formerly the president might be reelected immediately, now a term of 4 years must intervene. The president's veto power was also restricted; formerly, if a bill were vetoed by the president, in order to secure its reconsideration it must be passed again in its house of origin by a two-thirds vote and in the other by an absolute majority; but by the revised constitution both houses might reconsider a bill sent back by the president, and if repassed by an absolute majority it became law. In the constitution of 1834 the vice-presidency was abolished, and in case of the death of the president, or his inability to serve, the president of the council of state should take over the office temporarily, and within 10 days convene the electoral college. Incidentally, the composition of the council of state was slightly modified and its powers extended. The new constitution permitted the ministers of state to attend debates of either house, but they must retire before a vote was taken. It was also provided that upon certain occasions, for example, at the opening and closing of all sessions and for the canvassing of presidential election returns, the two houses should meet together. Finally, a rather complicated process was devised for amending the constitution, but it was wholly under the control of the legislative body, with no popular referendum contemplated.

[14] For its text, see J. F. Olivo, *op. cit.*, pp. 149–188.

This constitution of 1834 had been in operation scarcely 2 years when General Santa Cruz made his ill-advised attempt to unite Peru and Bolivia into what was known as the Peruvian-Bolivian confederation. He was aided in his effort through an abortive revolution led by General Salaverry against President Orbegoso. The latter, foreseeing complete defeat at the hands of a young and vigorous rival, asked Santa Cruz, at that time practically dictator of Bolivia, to come to his aid. Santa Cruz needed little persuasion, and he soon had all Peru under his control.

As a first step towards confederation, Santa Cruz divided Peru into two parts known as *North Peru*, consisting of the departments of Amazonas, Junín, Libertad, and Lima, and *South Peru*, consisting of the departments of Arequipa, Ayacucho, Cuzco, and Puno, The constitution for the former was drawn up in the city of Huaura and promulgated August 3, 1836, while the constitution for the latter was executed in the city of Sicuaní under the date of March 17, 1836.[15] Both were very short instruments somewhat similar in form, and were to serve merely until a federal constitution might be drawn up. The principal provisions were those establishing the confederation and giving the supreme power to General Santa Cruz under the title of supreme protector. Speaking of the personal qualities of the representatives at Huaura, Paz Soldán declares that a few were corrupt, the majority incompetent and ignorant, and almost all abjectly servile.[16] Vargas characterizes the labors of both bodies as farcical.[17]

As might be expected, under these instruments Santa Cruz ruled as he saw fit, but it must be conceded that his despotism was both benevolent and effective. He reorganized the finances of the government, weeding out ruthlessly the dishonest and incompetent. He speeded up the administration of justice to such an extent that the superior court of Lima quintupled the cases heard. He injected new energy and discipline into the army and navy. He stimulated commercial relations by reducing restrictions and improving the port facilities. But in nothing did he show greater interest or expend more energy than in improving and increasing educational facilities. The primary schools, normal schools, and colleges all profited by his tremendous energy.

Santa Cruz, by the decree of October 28, 1836, had declared the Peru-Bolivian confederation established. To establish the basis of a constitution for the confederation he appointed three plenipotentiaries from each of the three states, who were to meet at Tacna, January 25, 1837. The meeting, however, was delayed until April 18, but once having come together the conference quickly formulated an

[15] Both texts are found in J. F. Olivo, *op. cit.*, pp. 191–200.
[16] *Historia del Perú Independiente* (1835–1839), p. 61.
[17] *Op. cit.*, vol. VIII, p. 42.

organic act for the Peru-Bolivian confederation. Although never put into operation, this constitution of May 1, 1837, can hardly be omitted even in this very brief sketch of the constitutional development of Peru. It consisted of a preamble and 45 articles. The legislative power was vested in a bicameral body consisting of a senate and a house of representatives. The senate of 15 members—5 from each state, chosen by the protector from names submitted by electoral colleges of the states—had certain special powers such as acting as a sort of court of impeachment, approving treaties, and granting special honors. The house of representatives, consisting of 21 representatives, 7 from each state, was elected by the general congress from nominees selected by electoral colleges in the states. The lower house was given power to initiate legislation of practically all kinds. Both houses together had certain functions, such as the election of the protector. However, the most interesting sections of this constitution related to the executive. The supreme chief or protector was chosen for 10 years, with the right of being reelected indefinitely. He was given extensive appointive powers, among which were included the naming of the presidents of the three states and the senators, the complete control of army and navy, the right to initiate laws and even to dissolve congress. Santa Cruz could not have asked for a constitution better adapted to give him absolute control of the state.[18]

Although this constitution was enthusiastically received in the south, its reception in the north was rather lukewarm. A certain amount of the opposition was personal, but there were many who, while appreciating the great ability of Santa Cruz, still felt that no organic law should be accepted whose conception was so contrary to democratic ideals. There was also the patriotic fear among many Peruvians that under such an instrument Bolivia would obtain undue preponderance. When Santa Cruz saw that the opposition was too great to be disregarded, he called a new congress to meet in March 1838, but the war with Chile prevented its assembling. The confederation itself came to an end with the defeat of the confederate forces under Santa Cruz at Yungay, January 20, 1839.

Within 6 months of the fall of Santa Cruz, a general congress assembled in Huancayo under the general direction of General Gamarra to formulate a new constitution. The constitutions of Santa Cruz were not taken into consideration, and the new organic act was designated as taking the place of the constitution of 1834. The congress began its labors August 15, 1839, and the new constitution was promulgated under the date of November 10, 1839. Although the phraseology and arrangement are often different, the constitution of

[18] For text see *Colección de Leyes y Decretos* (Lima, 1841), vol. v, pp. 545–551.

1839 was in substance almost a replica of the constitutions of 1828 and 1834, resembling the latter more closely than the former. A few changes, such as giving the president a 6-year term instead of 4, changing the term of deputies from 4 to 6 years, one-third retiring every 2 years, and that of senators from 4 to 8, one-half retiring at the end of every 4 years, and requiring the congress to meet at least once every 2 years instead of annually, seemed to indicate a desire for greater stability, by reducing the frequency of elections. Perhaps the most important differences between the constitutions of 1834 and 1839 were the provisions in the latter giving the president power to suspend any judge from the exercise of his functions for a period of 4 months if public convenience required it, and the power to remove justices of the supreme court with the unanimous vote of the council of state, justices of the superior courts with a two-thirds vote of the council of state, and the judges of first instance with an absolute majority. But outside of these changes the new constitution showed clearly that the constitutional development of Peru was not changed greatly from the general lines laid down in 1828.

The constitution of 1839 established a new record for longevity by remaining in force for 16 years. However, during the period 1841 to 1845, that is, from the death of President Gamarra in the battle of Ingavi until the election of President Castilla, a period of almost complete anarchy reigned. Menéndez, Torrico, Vidal, Vivanco, Elías, and then Menéndez again followed each other in rapid succession as provisional heads of the government, but none of them remained in power long enough to tamper with the constitution. But during the 6 years (1845 to 1851) when President Castilla was in office, we have an era of peace and progress. Fiscal reforms were inaugurated and exploitation of the rich deposits of guano and nitrates began.

The elections of 1851 were carried on peacefully, and General Echenique was elected president. This same year the codification of the civil law was completed and in July 1852 it took the place of the old Spanish laws. The administration of General Echenique, which began under such favorable auspices, was engulfed in a tide of prosperity. An orgy of extravagance and corruption in the government provoked a revolution in 1854 which brought Castilla back again as head of the state. After a dictatorship of 6 months he called a national convention which elected him provisional president and promulgated a temporary constitution known as the *estatuto provisorio* of July 26, 1855. It was a very short instrument, consisting principally in an enumeration of the executive powers. A year later, October 19, 1856, the national convention promulgated a new constitution, the twelfth in the series.[19]

[19] The texts of both may be found in J. F. Olivo, *op. cit.*, pp. 243–278.

The constitution of 1856 was considerably shorter than its predecessors and introduced a number of new and original ideas. Considering it as a whole, the most noticeable change seemed to be towards greater democracy. In fact, the constitution of 1856 was undoubtedly the most radically democratic instrument which has ever served Peru as an organic law, and shows clearly the ideas which the revolutionary spirit of 1848 caused to germinate all over the world. For example, the right of association and of collective petitioning was granted for the first time, electoral colleges were abolished and direct popular elections established; the congress was to be elected directly by the people as a single legislative body, and then by lot was to divide itself into two chambers, a senate and a chamber of deputies. The president also was to be elected by the people in the way that the law should prescribe. The guarantee of individual rights was given particular attention, and both slavery and capital punishment were abolished. The president's powers were reduced, his term limited to 4 years,,and the office of vice-president reintroduced. In many ways it is one of the most interesting of all the Peruvian constitutions, but inasmuch as it remained in force less than 4 years, and its provisions are out of accord with the gradual constitutional development of the country, it does not require extended notice here.

Castilla himself found the constitution altogether too liberal, particularly in the restrictions placed upon the use of the army. A revolution in the south engineered by the conservatives against the constitution gave him excuse to demand its reform. A congress was assembled in 1858 for that purpose, but as the radical elements were still very strong nothing came of it. However, the congress elected in 1860 was more conservative in its composition, and it soon decided that the constitution of 1856 was not suitable to the needs of the country. The result was the promulgation November 13, 1860, of a new fundamental law of the state, a constitution which, with slight interruptions, was to remain the organic law of Peru until the constitution of 1920 was proclaimed.

The constitution of 1860, like those of 1828, 1834, and 1839, was modeled closely upon that of the United States. The conservative element, although willing to accept some of the liberal tenets of the constitution of 1856, was determined to make the new organic law a safe and sound instrument of government. Therefore they preferred to incorporate as many provisions as possible whose soundness and value had already been tested by experience. But when an innovation such as the right of peaceful association, or the right to petition collectively, seemed a reasonable constitutional guaranty, they permitted it to be included. The separation of powers, the bicameral system, an executive with ample powers, a council of state known now as the permanent commission of the legislative power, and a

judicial system with practically no changes in its organization were all retained as the essential bases for a successful system of government.

Inasmuch as the constitution of 1860 has served the Peruvian state as its fundamental law for over half a century, and in many respects does not differ greatly from the present constitution, a brief outline of its principal provisions seems necessary.

The Roman Catholic faith was recognized as the religion of the state and the republic; practice of any other religion was prohibited. In regard to the guaranty of national and individual rights, practically all the essential guaranties of former constitutions remained. The clause prohibiting slavery was more inclusive and definite than any hitherto covering that subject, declaring that slavery does not and can not exist in the republic. One guaranty which has a particular interest to-day is that forbidding expatriation except by judicial sentence. This first appeared in the constitution of 1834, disappeared in that of 1839, reappeared in the constitution of 1856, and is also found in the constitution of 1860 (art. 20). The right of foreigners to acquire landed property in the state subject to the same limitations as Peruvians is another interesting clause carried over from the constitution of 1856. Both nationality and citizenship were regulated by the constitution, and the suffrage was limited to Peruvian citizens 21 years of age or married, who knew how to read and write, or were managing some business or establishment, or who held some landed property, or who made some contribution to the public treasury.

As to the form of government, the constitution declared it to be a "unitary representative democratic republic." The legislative power was vested in a congress consisting of a senate and a chamber of deputies. Both deputies and senators were to be of Peruvian birth, have reached the age of 25 and 35 years respectively, and have a certain income or be engaged in some professional or scientific pursuit. Certain persons, such as high officials of the state, including the president, vice-president, ministers, prefects, etc., ecclesiastics, judicial officers, and military officials, were prohibited from being elected unless they should resign their positions. Congress should meet at least once every 2 years in ordinary session for 100 days, and in extraordianry session whenever called by the executive. Parliamentary immunity was guaranteed to representatives and senators. Each chamber was elected for a 6-year term, one-third going out each 2 years. Among the principal duties of the congress were the making, modifying, and repealing of laws, the laying of taxes, proclaiming the election of the president and vice-president, and under certain conditions electing them, approving the budget, declaring war, approving or disapproving treaties, declaring when the country was in danger and thereupon suspending certain individual guaranties, determining the land and sea forces of the state, and examining at the end of each constitutional

period the administrative acts of the executive and approving them if they conformed to the constitution and the laws, otherwise the chamber to make accusation before the senate.

Among the special powers of the congress we find the impeachment process practically the same as in the constitution of the United States, the lower house bringing the charges and the upper house trying the case, and in case of guilt suspending the official from his duties. The jurisdiction, however, is greater, inasmuch as not only the president, vice-president, ministers, and members of the supreme court are subject, but also members of both chambers. An important change in the introduction of money bills is found in the constitution of 1860 as contrasted with those of 1828, 1834, and 1839, in that here the right is given to both houses where formerly it was restricted to the lower. It should also be noted that the right to initiate laws was extended to the executive and in judicial matters to the supreme court. Legislative procedure followed the customary method, with the president's veto overridden by a majority vote. However, certain important matters, such as the declaration of war, the approval of treaties, and the declaration of a state of danger to the republic, required a majority vote of the congress in a joint session.

The executive power was vested in a president elected by the people by a majority vote for a term of 4 years, with reelection permitted only after an equal period. A first and second vice-president were also to be elected in the same manner and at the same time as the president. A provision was made for the suspension of the president from his office in case he should take command in person of the public forces, in case of temporary infirmity, or in case of being tried for treason, for attempting to change the form of government, for dissolving congress, or preventing its reunion. The constitution of 1860 seems to be the first which requires the president to give an account of his administrative acts at the end of his term to the congress for its approval or disapproval. (Art. 86.) The president was not allowed to leave the country during his term of office without the permission of the congress.

The president's powers were those ordinarily given to a chief executive, namely, to promulgate and execute the laws, to maintain internal order and external security, to convoke the congress, to present a message on the state of the republic, to direct diplomatic relations and make treaties, to name and remove ministers and diplomatic agents, to receive foreign ministers and admit consuls, and to name such employees as the constitution and laws should provide. The following restrictions were imposed: Treaties could be made only with the approval of the congress; the president could not leave the country during his term of office nor personally command the armed forces without the consent of the congress. Furthermore, all orders and decrees of the president had to be signed by the appropriate minister

to make them valid. However, this did not establish a parliamentary system, since the ministers were entirely subject to the president rather than to the congress.

The ministers united formed the council of ministers, whose organization and functions were to be laid down by law. The ministers were to make reports to the congress, suggest laws, answer questions, and discuss bills before the congress, but were not allowed to vote. The ministers were responsible collectively for the resolutions passed in council and individually for the acts peculiar to their departments. Although the ministers were responsible only to the president, a body known as the "permanent commission of the legislative body," consisting of 7 senators and 8 deputies elected by the congress, could ask the chamber to proceed against a minister violating the laws if the president refused to act after his attention had been called to the case. This permanent commission also had power to settle disputes regarding jurisdiction between the supreme court and the superior courts, or between the supreme court and the executive. Such a commission, by its very nature, would be in constant difficulties or else wholly impotent, and it was suppressed by law, August 31, 1874.

Practically no change was made in the organization of the judiciary, the supreme court, superior courts, courts of first instance, and justices of the peace being retained. Judges of the supreme court were to be named by the congress from a panel of names submitted by the executive, judges of the superior courts were to be named by the executive from names submitted by the supreme court, while judges of first instance and fiscal agents were to be named by the executive from names submitted by the superior courts. Strangely enough no provision appears in the constitution regarding the term of office, although the constitutions of 1828, 1834, and 1839 provided for life terms or during good behavior.

The provisions regarding internal control were very brief and gave practically complete powers to the executive. The republic was divided into departments and provinces, and prefects and subprefects put in charge to see that the laws were enforced and public order maintained. The departmental *juntas* were abolished. All control of municipalities was to be determined by law.

Finally, in regard to amending the constitution, it was provided that changes could be made in the same manner as ordinary legislation, provided that the amendments before going into effect should be passed with the same procedure at the next regular session of the legislature.[20]

With the promulgation of the constitution of 1860, the constitutional development of Peru seems to have crystallized. This instrument,

[20] For the text of the constitution of 1860, see J. F. Olivo, *Constituciones Políticas del Perú* (Lima, 1922), pp. 281–310; for a comparative study of the constitutions through 1867, see M. A. Fuentes, *Derecho Constitucional Universal* (Lima, 1874), vol. II, pp. 205–272.

although conservative in character, shows clearly the liberal influences of the constitution of 1856. Perhaps it was this moderation, this avoidance of extremes, that made it a more satisfactory organic law than its predecessor. Furthermore, its ease of amendment made it a fairly flexible instrument of government. It should be noted, however, that very few important changes in it were made. The first and most radical occurred in 1874, when the permanent commission was abolished. Another amendment occurred in 1879, when annual instead of biennial sessions of the congress were required, and each session limited to 90 days.

A still more important change occurred in 1887, when article 56, which required any senator or deputy accepting any office granted by the executive power to resign his seat in the congress, was modified so as to permit a congressman to accept a minister's portfolio and still remain a member of the congress.

The only other amendments, except for purposes of clarification and rearrangement, which need to be noted, are the amendment of November 19, 1895, which restricted the suffrage qualification somewhat by limiting it to male citizens 21 years of age or married, who knew how to read and write, and the amendment of November 11, 1915, which struck out the part of article 4 which forbade the public exercise of any other except the Roman Catholic religion.

It must be noted that upon two important occasions during the 60 years of its existence the constitution of 1860 was completely suspended. The first suspension took place in 1867, during the dictatorship of Colonel Prado, who had seized the power to drive Spain from the Chincha Islands. When the war was over he called a congress to prepare a new constitution. The congress met in February, 1867, and on August 29 of the same year it promulgated a new constitution which was a compromise between the liberal instrument of 1856 and the more conservative one of 1860. As it remained in operation less than 5 months, or until January 6, 1868, when General Canseco as vice-president reestablished the constitution of 1860, its influence was negligible. The second occasion took place during the war with Chile, when Don Nicolás de Piérola seized the government and acted as dictator from December 27, 1879, until January 18, 1881. During this period the constitution of 1860 was definitely abrogated and the country ruled under an *estatuto provisorio* dictated by Piérola. The generals who followed Piérola, however, assumed their authority under the constitution of 1860, and General Iglesias in 1883 publicly declared it to be in operation. In 1885 the congress also declared it operative and issued a call for an election under its terms. With the election of General Cáceres to the presidency in 1886, the constitution of 1860 entered upon a period of comparative stability, and was neither suspended nor modified, except in accordance with its provisions, until the constitution of 1920 was promulgated in its place.

CHAPTER II.

THE CONSTITUTION OF 1920.

Discussing in his brilliant fashion the constitutional development of his country, Francisco García Calderón thus summarizes the problem:

> Republican Peru, created by a single gesture from autocracy, was, according to the classic tradition, a masterpiece of romanticism. A divorce existed between the perfect and finished form of the constitution and its political principles and the character of the country. Liberty prematurely acquired was bound to produce disintegrating effects. A general anarchy which hid an uneasy and rebellious individualism, a soaring towards all the liberties, a lyric spontaneity, a horror of all rule and guidance, the destruction of power to accept a dictatorship afterwards; inconsistency, lack of discipline, the cult of form and word, sonorous utterance and enthusiasm became the characteristics of this great political movement. Liberty destroyed order and it was an undecided and troublesome liberty.[1]

It does not require a very extended study of the history of Peru since her independence to appreciate the force and aptness of these remarks. Rebellious individualism is the *bête noir* of Peruvian politics and Peruvian government. Perhaps nowhere can be found a greater respect for the theories of constitutional government or keener appreciation of its value than in Peru; yet, at the same time, there is a careless disregard of or a smiling indifference to the practice of its principles. An appreciation of the universality of law, coupled with a spirit of obedience to it on the part of its citizens, would lighten the burden of the government immeasurably; for without this habit of respect for law, there is bound to be a constant appeal to force, and under such conditions only an autocratic system or a dictatorship resting upon force can insure peace. The constitution then ceases to be the foundation of the government. It must either serve the power in control as a sort of first wall of defense, or else be torn down and reshaped to the exigencies of the occasion.

Therefore, although the constitution of 1860 remained the organic law of Peru and in constant operation from 1886 until 1920, there were occasions when its powers were seriously strained. This was particularly true during presidental election periods. At the death of President Bermúdez in 1894, a revolution rather than the constitution decided the succession. The resignation of President Billinghurst in 1914, and the election of Benavides as provisional president by the congress, were hardly in strict accord with the spirit of the constitution. Even though it was generally conceded that President Leguía

[1] *Le Pérou Contemporain* (Paris, 1907), p. 78.

had received a majority of the votes in the elections of 1919, he found it necessary to insure his inauguration by the *coup d'etat* of July 4.

It is not surprising that when the organic law of a state fails to meet the various demands made upon it that a demand should be made for its revision. The real cause of the trouble may lie wholly outside of the constitution, and in fact quite often does, yet it is easier to change constitutions than the natures and habits of those who live under them. Although, after the disastrous war of the Pacific, the economic progress of Peru had been really remarkable, the even greater advances made by the Argentine Republic and the United States seemed to inspire a feeling of pessimism in many eminent Peruvians.

Doctor Victor Andrés Belaunde felt that the collective conscience in Peru had been weak, its national aspirations badly oriented; the constitution of 1860, whose great errors had been endured for sixty years in shameful patience, was the result of a polemic not over the structure of the country or its vital needs, but of abstract political theories wholly unapplicable to the question at issue.[2]

Doctor Mariano H. Cornejo was equally pessimistic over the situation, but was more specific in placing a part of the blame on the existing constitution. He particularly objected to the election of the legislative body by thirds every 4 years, and to the direct election of the president. His solution was a complete renewal of the legislature at every election and the choosing of the president by the congress or by an electoral college.[3]

Another group in the south of Peru, under the leadership of Francisco Mostajo, believed that the remedy could be obtained only by a greater decentralization, even going so far as the establishment of a federal state if necessary. The underlying causes of this current of opinion seemed to be a bitter hostility towards what was regarded as the selfish autocratic and bureaucratic oligarchy in Lima on the one hand and a general opposition to militarism on the other. The feeling of this group was well expressed by Doctor Pedro S. Zulen, who, in a series of articles in *La Crónica* during the early months of 1915, pointed out the evils of the existing system. The solution was summed up by an editorial in *La Union* of Puno:

> Only under a régime of ample fiscal decentralization and regional administration can Peru be regenerated. The difference in the modes of life among the various regions of the national territory requires a difference of laws that regional congresses alone can give. The lack of control over the abuse of the executive power has been a harmful influence in the composi-

[2] V. A. Belaunde, *La Crisis Presente*, *Revista Universitaria*, 1914, vol. I, p. 406.

[3] The text of this most interesting and well-reasoned address may be found in the *Revista Universitaria* (August 1915), vol. II pp. 81–119. For comment and for a discussion of the various problems facing Peru, see Pedro Dávalos y Lissón, *La Primera Centuria* (Lima, 1919), vol. I.

tion of parliament, in the judiciary, and even in the army. The only solution is the establishment of the federal system.[4]

In spite of these indications that certain constitutional changes were desirable, neither party in the elections of 1919 advocated in its platform the revision of the constitution. The first indication that a revision was contemplated was the publication in *El Peruano*, the official organ of the government, on July 22, 1919, of a decree signed by President Leguía, putting before the people for a popular referendum the project of a reform of the constitution. This decree had been approved unanimously by the council of ministers, among whom we find the names of Señor Porras and Señor Cornejo. The project contained 19 articles, but as they were all incorporated almost verbatim in the new constitution, they need not receive detailed attention here. The most noticeable changes were the complete renewal of congress every 5 years, coincident with the election of the president, a clause prohibiting the suspension of the individual guaranties by any law or by any authority, the organization of three regional legislatures, and the reestablishment of the council of state.

Another decree published the following day called for the elections to be held on August 17 and 18, when the voters would ballot on the constitutional reforms and also elect senators and deputies to the congress and deputies to the regional legislatures.[5] The congress thus elected would meet on September 15, and for 30 days it would function as a national assembly to promulgate the reforms approved by the popular referendum. By the mere fact that regional legislatures were to be elected, it seemed to be taken for granted that the government's program would be adopted. It was also decreed that the number of senators and delegates to be elected should correspond to the number specified by article 2 of the program of reforms, namely, 35 senators and 110 deputies.[6] A still later decree determined the functions of the regional legislatures.[7]

The government's program was approved at the elections and the national assembly was installed September 24, 1919. The keynote of the gathering was sounded by its president, Mariano H. Cornejo, in his reply to President Leguía's speech of welcome:

> The constitutional reforms which the republic has just approved with overwhelming enthusiasm were inspired with the noble purpose of replacing the artificial with the true . . . . of substituting for the personal régime, inseparable from intrigue and violence, and condemned to misconduct and error, a régime of public opinion and justice, one which although feared by vulgar and courtesan souls is the only one which a free people can tolerate.

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[4] Quoted by Señor Zulen in *La Crónica*, February 28, 1915.
[5] *El Peruano* 1919, vol. II, p. 969.
[6] *Ibid.*, p. 977.
[7] *Ibid.*, p. 989.

Among the reforms which Señor Cornejo then demanded as essential we find first, a congress which shall be elected as a unit rather than by periods; second, the establishment of regional legislatures as a step towards decentralization, and third, a progressive tax on incomes, as the most just that can be devised in a democracy.[8] As these were all important points in the government's program already approved by the country, it could be foreseen from the opening speech of Señor Cornejo that either the constitution of 1860 would be remodeled in accordance with reforms passed upon, or else a new constitution would be adopted with the government's program as its foundation.

The first problem presented referred to the respective value of the votes of representatives and senators, but it was quickly decided to function as a unicameral body, all questions to be decided by a majority vote, providing this majority contained at least a third of the total number of senators and a third of the total number of deputies. The second and far more important question pertained to the powers existent in the constituent assembly. Was the assembly by the mandate conferred by the plebiscite authorized only to coordinate the constitution of 1860 with the 19 points approved by the people, or could it, taking these points as an irreducible minimum, build upon them an entirely new constitution, which should include parts of the former constitution and also such new matters as the assembly deemed wise to incorporate? The *comisión de constitución,* which reported upon the question to the assembly handed in both majority and minority reports. The majority favored an entirely new constitution, and they submitted a preliminary draft of it, with their report. By an ingenious use of type they showed what parts were taken from the constitution of 1860, what parts were those incorporated from the 19 articles, and what parts were entirely new.[9] After a long and bitter debate, a motion was finally passed declaring that the 19 points were irrevocably a part of the new constitution, but that the assembly had the authority to integrate, accord, and complete the reforms which had been approved by the vote of the people.

Inasmuch as almost a month was consumed in agreeing upon this point, it was readily seen that it would be impossible to complete the work in hand within the 30 days originally assigned. In fact, more than three times as much time was required as was originally provided, and the completed instrument was not signed until December 27, 1919. Whatever opinion may be formed upon the work accomplished by the national assembly of 1919, it must be conceded that the members worked long and faithfully upon the task before them. There was complete freedom of discussion at all times and no interference at any time upon the part of the executive authority. Although the result by no means satisfied all, the new organic act was signed by its

[8] *Diario de los Debates de la Asamblea Nacional de 1919*, vol. I, pp. 9–14. [9] *Ibid.*, pp. 255–287.

makers with the feeling that it had improved some of the principal defects of its predecessor, and attempted to put into effect the reforms most evidently demanded by the country. In the words of Señor Cornejo, who had presided in most able fashion throughout the arduous course of the debates:

> The constitution which you have sanctioned upon the base of the popularly approved reforms, will possess surely the imperfections of every political work which is obliged to consider different points of view; it will have the deficiencies of every collective work which can not achieve the integrity of individual labor; but with its imperfections and its deficiencies it is the most transcendental reform that Peru has realized since its independence.[10]

The new constitution consisted of 161 articles classified or arranged under 19 titles or groups. Although owing to its rearrangement and reclassification it is rather difficult to compare it article for article with the constitution of 1860, Doctor Villarán has attempted it with considerable success, and even a superficial scrutiny of his work shows that more than two-thirds of the new constitution has been taken verbatim from the constitution of 1860.[11] The most important changes made were those outlined in the 19 points submitted to the country. Inasmuch as the avowed purpose of revision was to provide a more democratic and less bureaucratic government, the general tendency was along these lines—more stringent protection of the rights of the individual, a more complete check upon the executive by the representatives of the people, and a greater decentralization.

The first addition that we find in the new constitution, and one that does not appear in any of the previous organic acts, is a statement regarding the functions of a state.

> The purpose of the state is to maintain the independence and integrity of the nation; to guarantee the liberty and the rights of the inhabitants, to preserve the public order, and to further the moral, intellectual, material and economic progress of the country. (Art. 4.)

Opposition was made to the insertion of this article on the ground that it was merely a doctrinaire statement and of no practical value, but it was retained because it seemed advisable to recognize the fact that the modern state had other than political functions.

The article regarding religion was the same as the amended form of the similar clause in the former constitution, namely, that the state professed and protected the Roman Catholic religion. The committee on the constitution recommended an article recognizing the liberty of thought and conscience, and definitely forbidding religious persecution, but after a prolonged debate the article which was finally inserted in the bill of rights reads as follows: "No one may be persecuted for his ideas or his beliefs." (Art. 23.)

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[10] *Diario de los Debates de la Asamblea Nacional de 1919*, vol. II, p. 1566.
[11] M. V. Villarán, *Las Constituciones de 1860 y 1920 Concordadas* (Lima, 1920).

In sections II, III, and IV, which are devoted to national, individual, and social guaranties, we find the greatest amount of entirely new material. As originally presented by the committee on the constitution, all these constitutional guaranties were lumped under the single head of national guaranties. It might have been more accurate if this arrangement had been kept, because under the triple classification the arrangement is often arbitrary and meaningless. For example, such guaranties as equality and equal protection before the law, and the protection of life and honor against unjust aggression, which properly appeared in the constitution of 1860 as individual guaranties, are now classified as national guaranties. Certain other articles as, for example, article 10, which guarantees the payment of the public debt and the inviolability of all obligations of the state contracted according to law, seem out of place in a bill of rights and unnecessary in a constitution. For convenience and the better to show the foundation of the constitution, perhaps we may group these constitutional guaranties under three heads: (1) those derived directly from the constitution of 1860; (2) those promulgated in the government's decree and approved by the plebiscite; and (3) those which originated in the national assembly.

Among the constitutional guaranties carried over from the constitution of 1860 we find the following: the prohibition of hereditary offices, privileges, and personal immunities; the provision that taxes shall be imposed only by law and for a public purpose; the nullification of the acts of those usurping public functions and the prohibition of all offices except those established in accordance with the constitution and the laws; the right of any Peruvian to complain to the congress or to the executive, or any other competent authority, for violations of the constitution; the clause guaranteeing equal protection of the law; the prohibition against the retroactive effect of any law; the guaranty against arrest without the warrant of a judge or other qualified authority; the protection of the inviolability of the domicile and the secrecy of the post; the right to assemble peacefully in public or private, and to petition the government individually or collectively; the freedom of the press, and the inviolability of private property. These guaranties are of the character that are found in nearly all constitutions which include a bill of rights, and as such the national assembly made practically no opposition to their inclusion.

The 19 points submitted to a popular referendum included certain guaranties, mostly of the individual, and these were all inserted without debate and with very little change in the new constitution. In this group are found such provisions as: the income tax shall be progressive; the emission of bills of credit as legal tender except in time of war is prohibited; no one shall draw more than one salary from the state, no matter what positions he holds; the disputes between capital

and labor shall be submitted to obligatory arbitration; and finally, and perhaps most revolutionary of all, the individual guaranties may not be suspended by any law or by any authority. This provision is contrary to the constitution of 1860 and to most other Latin American constitutions, which permit certain individual guaranties to be suspended by the congress in times of emergency. Inasmuch as such suspension is bound to occur if the situation demands it, such a prohibition, it would seem, might better have been omitted.

Finally, we have a large number of guaranties, for the most part social, which were entirely new, and which originated in the national assembly. In this group are found such provisions as these: the state shall legislate in regard to the general organization and safety of labor in industry, and shall regulate the conditions of work and the minimum salaries in accordance with the conditions and necessities of the various parts of the country; monopolies and trusts are forbidden, except those established by the state in the public interest; primary education for all children over 6 years of age is compulsory and free, and the state will also foster secondary and advanced instruction; the state will establish and support hospitals, asylums, and institutions for the care of infants and of the needy; in emergencies, authority is granted to the executive to adopt measures tending to lower the prices of essential articles of life, with the sole limitation that in case of expropriation, due indemnity must be granted; the state recognizes the legal existence of the Indian communities and the rights which they possess, and as the need is shown, legislation will be passed to assist them in their development and progress.

In this last group are also included certain economic guaranties which are very similar to those found in article 27 of the Mexican constitution of 1917. For example, as regards foreigners, it is provided that in the enjoyment of property rights they have the same status as Peruvians, but foreigners neither individually nor collectively may acquire or possess property within 50 kilometers of the frontiers. Furthermore, all mineral property belongs to the state, and can be owned or exploited only in accordance with conditions laid down by law. It is also provided that by law the state may take over all land, water, and air transportation, or any other public services, under private management, providing due compensation is made.

Finally, certain individual guaranties of a judicial nature were amplified and made more secure. The new constitution provided that no one could be persecuted either for his ideas or for his beliefs; no one could be condemned except in accordance with existing laws and by judges ordained by law; neither could any one be exiled from the republic or from his residence except by judicial sentence or by application of the law of aliens; anyone arrested had the right to invoke *habeas corpus* proceedings; seizure for debt was absolutely

prohibited; and the death penalty was abolished except for treason or murder.

This brief summary makes it clear that the bill of rights in the constitution of 1920 is far more extensive than in any other constitution which has served Peru. In fact, almost one-third of the total constitution is devoted to these guaranties. Whether some of these clauses would not be better placed in the laws, or even in administrative decrees, is a question open to debate, but it must be conceded that the constitutional assembly was merely following the same tendencies found in Mexico, Uruguay, and the new states of Europe formed since the great war.[12] The modern state is vitally concerned with social and economic problems, and the more clearly this is recognized, the greater the tendency to try to safeguard the individual against social and economic as well as political injustice. It may be argued that such guaranties are very difficult to maintain, and that in the Peru of to-day some of them are notoriously disregarded; but even if all this be true, should we not hesitate to criticize too severely? These problems are new and they must be faced, and when men are intrusted with the tremendous problem of rewriting the organic law of their country it is surely the part of true statemanship to chart the course as perfectly as possible. Perhaps the most difficult problem facing the state to-day is that of legislating for the general welfare while at the same time maintaining individual rights.

The next sections of the constitution (Title VI), which consider citizenship and the suffrage, are not changed greatly from similar sections in the former constitution. All persons are regarded as native Peruvians who are born within the republic or born of Peruvian parents domiciled abroad, provided in the latter case their names are inscribed in the civil register by act of their parents during their minority, or by their own act upon attaining majority. All foreigners more than 21 years of age are regarded as naturalized, provided they have lived in Peru for more than 2 years and that their names have been inscribed in the civil register in the manner prescribed by law. Obligatory military service is imposed upon every male Peruvian citizen. All Peruvians 21 years of age and all male Peruvians who are married are considered as active citizens, unless the privilege has been suspended through commission of some crime or lost by naturalization elsewhere. Suffrage, however, is conditioned upon ability to read and write and upon inscription in the military register. As a matter of fact, the electoral law of 1924, which supplements the new constitution (Ley No. 4907), disfranchises many others, for example, all army officers and soldiers in active service, all holding political positions, including the president, the ministers, the prefects, the subpre-

[12] H. G. James and P. H. Martin, *The Republics of Latin America* (N. Y., 1923), and M. W. Graham, *The New Governments of Central Europe* (N. Y., 1924).

fects and agents of police, and finally all justices, judges, and fiscal agents. An interesting innovation, which will receive attention later, is the clause giving jurisdiction to the judicial power to guarantee the electoral proceedings.

In the clauses treating the form of government, we find the first article identical with the constitution of 1860, namely, that the government is a representative democratic republic, unitary in form. The important change under this heading is found in Article 70, which says that the legislative power will be renewed as a unit and coincident with the renewal of the executive power; the president, senators, and deputies are all to be elected by a direct popular vote and for 5-year terms. Inasmuch as the contents of this article were taken directly from the 19 points approved by the people, no debate on the subject was possible. However, it will be remembered that the total renewal of the legislative powers coincident with that of the executive powers was one of the principal demands made by Señor Cornejo in his famous address of 1915. Señor Cornejo, as president of the national assembly, still believed ardently in this reform, and in his closing speech to the assembly, after the new constitution had been signed, expressed himself on the subject as follows:

> The partial renewal of the public powers, a bureaucratic renewal, a hypocrital substitution inferior even to the caste system, has been replaced by the total renewal, a system which draws its strength from the entire country and is both the driving power and the control of a democracy.[13]

The constitution next considers the legislative power, and here comparatively few important changes are made from the constitution of 1860. In the first place, the size of the legislature does not depend upon the population of the departments or the number of provinces, as was formerly the case, but the number of senators is arbitrarily fixed at 35 and the number of deputies at 110, and it is further provided that no change can be made in these numbers except by amending the constitution. The qualifications for deputy and senator remain unchanged, except for the abolition of the income requirement and the reduction of the residence requirement of the deputy from 3 to 2 years. As they now stand, a deputy must be a native Peruvian in active citizenship, 25 years of age, and a native or 2 years resident of the department to which his province belongs; a senator must be a native Peruvian in active citizenship, 30 years of age. All political and judicial officials and ecclesiastics are disqualified from serving.

The congress meets in regular session every year on July 28 for not less than 90 days and not more than 120. Special sessions having the same powers as ordinary sessions[14] may be called by the executive

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[13] *Diario de los Debates de la Asamblea Nacional de 1919*, vol. II, p. 1566.

[14] Under the constitution of 1860 there was some question as to whether a special session was not limited to the consideration of only those subjects for which it was called.

whenever he deems it necessary, but their terms are limited to 45 days. Both deputies and senators enjoy the usual immunities, and both may be reelected. Each chamber controls its own organization. The chambers meet together for the opening of the session, for the approval of treaties, and for the exercise of certain electoral functions laid down by the constitution; upon all other occasions they meet separately. The number necessary to constitute a quorum was reduced from two-thirds to 60 per cent of each chamber.

In laying down the powers of the congress, the assembly included practically all of the functions found in the constitution of 1860 and then added a number of others. Among these new attributions may be noted the power to fix tariff duties; the obligation of watching over the observance of the constitutional rights and guaranties, and assessing the responsibility for any infraction; and the privilege of naming parliamentary commissions of investigation and information. The senate was assigned the new function of approving the nominations of diplomatic representatives and the members of the council of state. Certain new prohibitions upon the powers of the congrees should also be noted: the congress may not authorize personal favors which impose any expense upon the treasury, nor may it increase the salary of any public official unless the initiative shall come from the government. Finally, the congress was assigned the task of voting each year the budget for the following year, but if for any reason a budget was not voted, the congress for that year should vote monthly quotas until the budget should be passed.

Perhaps the most interesting, if not the most important, of the new powers assigned by the constitution to the congress is found in article 133, under the group covering the functions of the ministers. It is here provided that no minister may continue to exercise his duties after a vote of lack of confidence has been passed upon him by either chamber. By custom and by law the congress had for some years been able to force out individual ministers when the occasion seemed to require it, but this is the first Peruvian constitution, and in fact the first constitution among the Latin-American states, which expressly sanctions such procedure.

The new constitution is extremely definite in its provisions regarding law-making, much more explicit, for example, than is the constitution of the United States; but in this respect it merely follows the precedent set by previous Peruvian constitutions. The initiative in legislation is placed upon a very liberal basis. Not only may it be assumed by senators and deputies, but also by the executive, by the supreme court in judicial matters, and even by the regional congresses. In the process of passing laws we find no changes from the former constitution, and inasmuch as this subject will be treated in some detail later, it need not be considered further here.

The one noticeable tendency in the new constitution in regard to the legislative powers as compared with the former, seems to be the granting of more control to the legislative department over the executive. The various clauses which seem to make the congress the guardian of the constitution, and the clause making the ministers to a certain extent subject to the congress, are apparently aimed at the executive. If an occasion should arise in which the presidency were in the hands of a weak or docile incumbent, the congress would seem to be in a position to establish a parliamentary system of government without stretching very far the powers conferred by the constitution. But inasmuch as in a Latin country the executive is much more likely to be the strong man of the government, and for that reason able to dominate the congress, such constitutional restrictions become theoretical aspirations rather than practical realities. The question might even be raised whether it is the part of wisdom to include in the organic law of the state, provisions whose effective enforcement is bound to be very problematical. Failure to carry out these provisions reacts unfavorably upon the stability and strength of the rest of the instrument. The eighteenth amendment has raised this question in a striking manner in the United States, and as the tendency seems to be to make new constitutions all-protective and all-embracing, is it not possible that the very foundations of constitutional law will be weakened by the top-heavy structures that are being raised?

A very important section of any constitution which provides for the presidential form of government is that which is devoted to the executive. This is particularly true in the Latin-American countries, where personalities count for so much in political affairs. Perhaps it is this justifiable fear of a dominating personality which has made the Latin-American countries somewhat less generous than the United States in the powers which they grant to their chief magistrates. Peru is no exception to the rule, and particularly in the constitution of 1920 do we note this tendency to place checks and controls upon the power of the executive.

In laying down the qualifications for the presidency, the new constitution is identical with the old; the incumbent must be a native Peruvian, an active citizen, 35 years of age, and for 10 years a resident of the republic. Ministers of state and members of the military in active service are not eligible unless they shall have resigned their offices 120 days before the election. The President is elected by a direct popular vote, and an absolute majority is required. In case no candidate receives such a majority it is impossible to say what would happen. In the constitution of 1860 it was provided that in such a contingency the congress would choose between the two highest, and in case of a tie from all of them. The present constitution is silent on the subject. In fact, article 116 says that "only in case

of the death or resignation of the president of the republic shall the congress within 30 days elect the citizen who shall complete the presidential term."

Article 117 says that the congress will also elect the citizen who should complete the presidential term in case the office is vacant through the permanent physical or moral incapacity of the president, or through his being pronounced guilty by judicial decree of treason or similar offense. In the preliminary draft presented by the commission, the provision found in the constitution of 1860 was accepted. But the debate brought out the fact that such a solution was contrary to article 3 of the 19 points, which said that *only* in case of the death or resignation of the president could the congress elect a successor to serve out the unexpired term. After considerable debate, the assembly settled the matter by omitting the clause of the former constitution. It was suggested in the debate that if no one received a majority, and congress should then choose the one who received the greatest number of votes, the solution would be constitutional and in accordance with the plebiscite.

The new constitution also lengthened the president's term from 4 to 5 years. The assembly, in order to prevent an immediate second term, devoted two articles to the subject; article 113 declares that the president may not be reelected except after a period of 5 years, and article 119 says that any citizen filling the presidency may not be elected for the following term. It is rather hard to see why both articles were necessary when the second seems to be all-inclusve, but the question is only one of academic interest at present, inasmuch as both have been amended. Article 113 now reads: "The president will hold office for 5 years and may for a single time be reelected immediately";[15] article 119 is as follows: "Any citizen holding the presidency may be reelected for a single time for the following term."[15] As a result of this timely amendment President Leguía is now serving a second consecutive term, and his third as president.

The powers of the president in the constitution of 1920 are almost identical with those under the constitution of 1860. As his powers will be treated in some detail later, only a very brief summary need be given here. As the chief executive, the president promulgates and sees to the execution of all laws and resolutions of the congress, and issues such decrees, orders, regulations, and instructions as are necessary to this end. As the head of the administration the president enjoys an extensive appointive power, shared with the senate to a less extent than is the case of the president of the United States. As the head of the state, he directs its foreign policy, receives foreign ministers, directs and organizes the public forces, influences the declaration of war or peace, maintains order within the republic, controls

[15] *El Peruano*, 1923, vol. II. p. 259 (Sept. 22, 1923).

the police, and directs such national services as agriculture, mining, commerce, and public instruction.

The president also possesses extensive legislative powers; he calls regular and special sessions of the congress; he attends the opening; he presents a message on the state of the republic, and presents in it such reforms as he deems necessary or advisable; he introduces bills and approves or vetoes those passed by the congress, except in regard to those functions pertaining to its own organization or those in its relations with the executive. The president also has the veto power over the resolutions of the regional congresses if he regards them incompatible with the national laws or with the public interest. Finally, he calls both general and special elections, although the congress may exercise this power if the executive does not act.

Inasmuch as the constitution provides that every public official is directly and immediately responsible for all acts performed in the exercise of his duties, the president is included in this category. To enforce this responsibility the chamber is authorized to prefer the charges and the senate to hear them. However, the president during his term of office can be tried only for such grave offences as treason, or for attempting to change the form of government, or for dissolving, preventing the assembling, or suspending the functions of the congress. All other offences committed in the exercise of his functions subject him to trial only after his term has expired.

As an aid to the president and as a check upon his powers, we find the ministers of state. By law these are named by the president from a list submitted to him by the president of the council of ministers, but in fact the president's choice is practically unlimited. A minister must have the same qualifications as a member of the lower house. Members of the congress are eligible, but while serving as ministers their functions as senator or deputy are suspended. The number and the organization of the administrative departments are determined by law. United the ministers constitute a council of ministers whose organization and functions are also determined by law.

The constitution devotes but three articles to the duties of the ministers. Article 127 declares that the orders and decrees of the president shall be signed by the ministers of competent jurisdiction before they have the force of law. Article 129 says that each minister must present to the congress at the beginning of its ordinary sessions a report concerning the condition of his department, and at any other time be ready to give such a report. The minister of finances shall also submit a report on the financial condition of the state for the preceding year and the budget approved by the council of ministers for the following year. Article 130 gives the ministers in agreement with the president the right to introduce laws into the congress and to be present at the debates until the vote is taken. These three clauses,

which are almost identical with those of the former constitution, show that the ministers are a sort of a bridge between the executive and legislative branches. But in order to increase the legislative control, articles 132 and 133 provide that the ministers shall be individually and collectively responsible, and any minister receiving a vote of lack of confidence passed by either chamber must resign.

As we have already pointed out, articles 127, 132, and 133 taken together would seem to indicate a parliamentary system already established. But inasmuch as the president also has the power to force the resignation of a minister, it is evident that the minister must sign a presidential decree or resign. Thus the minister is made subservient to the president, and the parliamentary force of article 127 is annulled. Furthermore, if a minister is forced out by a vote of lack of confidence, the president can immediately appoint another without the assent of the congress, and one who is equally bound to carry out the president's policies. No prolonged struggle between the executive and legislative branches is possible, because in practice the advantage clearly rests with the executive. Therefore, in spite of the implications in the new constitution that Peru is tending towards the parliamentary system, in reality the government is carried on under a system which is in the highest degree presidential.

In addition to the council of ministers, the constitution of 1920 establishes a new executive organ known as the council of state. It is to be composed of 7 members nominated by the council of ministers and approved by the senate. The cases in which the government shall ask its advice, and the cases when no action can be taken contrary to its opinion, are left to law. The law of January 31, 1920, provided for its organization and functions, but the fact that almost 5 years have now passed without its having been organized, in spite of the fact that this organ was one of the 19 points approved by the plebiscite, would indicate that the executive does not feel an imperative need for such advice as the council of state is authorized to give.

In its provisions regarding the judicial power, the new constitution has amplified and made more definite the clauses of the constitution preceding. The organization, however, remains the same: a supreme court at the capital, superior courts in the capitals of the departments, courts of first instance in the capitals of the provinces, and justices of the peace in all the towns. The judges and prosecuting attorneys of the supreme court are chosen by the congress from a list of 10 candidates for each office nominated by the government. The judges and prosecuting attorneys of the superior courts are appointed by the executive from a list prepared by the supreme court containing twice as many nominations as there are positions to be filled. In a similar manner the executive appoints the judges of the lower courts and their attorneys from lists prepared by the superior courts. All

judicial officers are prohibited from holding political offices at the disposal of the executive, except the judges of the supreme court, who may be named ministers of state. Neither may any judicial officer be elected senator or deputy; if a senator or deputy be chosen for the judiciary he must resign his parliamentary functions. By law judges are chosen for life, but judicial officers of the superior and inferior courts must be confirmed in their office every 5 years by the supreme court.

The constitution of 1860 makes few provisions as to the duties or jurisdiction of the courts. The constitution of 1920, on the other hand, lays down a number of specific functions which the supreme court shall perform. It is provided that the supreme court shall exercise authority over all tribunals and judicial officials of the republic not only in judicial matters but also in questions of discipline; and it is given power to correct, to suspend, and to dismiss judicial functionaries. The supreme court is given power to decide all questions of jurisdiction between the executive and the provincial council in the exercise of their autonomous functions. The supreme court is also given the very important function of guaranteeing electoral proceedings, but by the election law of 1924 its jurisdiction seems limited to deciding upon the validity of an election and determining those legally elected when the committees of election inspectors fail to authorize credentials. (Art. 29.) We have already mentioned its power to initiate legislation in judicial matters and its power to nominate judges of the inferior court. As to its power to declare null and void all laws passed by the congress which violate the constitution, nothing specific is said. However, as Dr. Villarán points in his brief study of Peruvian constitutional law, the subject seems to be covered by article 69, which forbids the public powers to go outside of the limits set by the constitution, and by article 13, which declares null the acts of those who usurp public functions. "For" as he says, "it is clearly a usurpation of functions on the part of the legislative power to pass laws repugnant to the constitution. And since these laws would be null, the judicial power could not countenance their enforcement or application without at the same time overstepping the limits prescribed by the constitution."[16]

Certain guaranties regarding the exercise of the judicial power are also laid down in the constitution. All decisions must be made publicly; the decisions must indicate upon what law or foundation they rest; a process once closed may not be reopened; no judgment shall be made by proxy; no one shall be condemned except in accordance with existing law and for the act charged, and by duly constituted judges; military justice can not, under any circumstances,

[16] M. V. Villarán, *Programa Detallado de Derecho Constitucional* (Lima, 1920), part II, p. 106.

extend its jurisdiction over persons outside of the military service, nor, in case of national war, to anyone; no change of venue is permitted during the course of a trial; no testimony obtained by violence has legal value; and all severity which is not necessary for the custody of the prisoner is prohibited.

In regard to municipal government the new constitution, just as the old, left the whole question in the hands of the congress. The division of the state into departments and littoral provinces—the former subdivided into provinces and districts—remained the same; nor was any change made in the internal organization and control. The prefects in the departments and littoral provinces were named by the executive and under his direct control. The subprefects in the provinces were also named by the executive, but were under the direct control of the prefects. The governors in the districts were named by the prefects and were responsible to the subprefects; and whenever necessary, lieutenant-governors were named by the subprefects and were responsible to the governors. The system is modeled upon the French administrative system. It was designed to centralize authority and its purpose is most effectively accomplished.

The one important innovation in internal administration was the establishment of three regional legislatures, one in the north, one in the center, and one in the south of the republic; deputies to these, to be elected by the provinces at the same time as they elected their national representatives. These regional legislatures were to hold annual sessions of 30 days, and their resolutions were to be sent to the executive for h s approval If he regards them as incompatible with the general laws or national interest, he submits them with his observations to the congress, which then deals with them as with any other vetoed laws. As the work of these regional assemblies will be considered later, only a general observation need be made here. The reason for the establishment of these assemblies was clearly to afford greater local autonomy. However, to accomplish such a result, it would seem necessary for the organic law to lay down more specifically what fields come under the jurisdiction of these local bodies. Without such a demarcation, misunderstandings are bound to arise between the national government and the regional assemblies. Furthermore, the absolute control possessed by the national government over the resolutions of the regional assemblies, coupled with their indefinite jurisdiction, would appear to be a very severe handicap to the accomplishment of any very effective reforms.

The constitution of 1920 made its amending process more difficult than the constitution of 1860. The latter instrument provided that constitutional changes could be made under the same procedure as ordinary legislation, with the sole limitation that such reforms be approved by the congress at its next regular session. The new consti-

tution maintained the same procedure, but provided that the reform must be approved by a two-thirds vote of each house in the two sessions. Up to the present time but one constitutional amendment has passed—the one permitting the president to hold office for two consecutive terms.

It is undoubtedly too soon to pass judgment as to the successful operation of the constitution of 1920. As far as the document itself is concerned, there is no doubt that it made possible the changes which seemed desirable, namely, more stringent and effective guaranties for the individual, a closer working relationship between the legislative and executive branches, and a greater decentralization. As an instrument of government it is a comprehensive, well-organized organic law based to a large extent upon experience. It affords Peru every opportunity to maintain a stable, effective government.

The only real objection to the constitution of 1920 is that it is a *new* constitution; and, after all, that is a valid objection. An old constitution is like a fine old tree; its roots are deep in the native soil, it has withstood many a storm and tempest, it has afforded protection and shelter, and its very age makes it worthy of respect. To cut down such a tree when all that is necessary is to cut out a limb or two would be the height of folly. Yet if a constitution which has served long and creditably can be amended, is it not much more the part of wisdom to amend it rather than to destroy it and begin anew?

This was particularly the case with the constitution of 1860. It was a good constitution; it had served as the organic law of Peru for more than half a century in a very satisfactory fashion; it was flexible, it had been amended, and could very easily have been adapted to any change deemed necessary. More than two-thirds of the new constitution is taken verbatim from it. Under the circumstances, a thorough revision of the former organic law along the lines dictated by experience, but preserving all its venerable and respected traditions, would have been an asset of incalculable value for stability in the future.

CHAPTER III.

THE EXECUTIVE POWER.

Lord Bryce, in his observations on South America, divides all the republics into three classes of states:

> The first consists of those in which republican institutions, purporting to exist legally, are a mere farce, the government being in fact a military despotism, more or less oppressive and corrupt, according to the character of the ruler, but carried on for the benefit of the executive and his friends. The second includes countries where there is a legislature which imposes some restraint upon the executive, and in which there is enough public opinion to influence the conduct of both legislature and executive. In these states the rulers, though not scrupulous in their methods of grasping power, recognize some responsibility to the citizens and avoid open violence or gross injustice. The third class are real republics, in which authority has been obtained under constitutional forms, not by armed force, and where the machinery of government works with regularity and reasonable fairness, laws are passed by elected bodies under no executive coercion, and both administrative and judicial work goes on in a duly legal way.[1]

Unfortunately, the eminent English writer in his illustrations classifies under these three groups only the outstanding examples, and Peru is not among them. However, the task would not be a very difficult one, although perhaps a rather delicate one for a foreigner. But we are spared the decision, for an eminent Peruvian publicist, quoting this same classification of Lord Bryce, declares that Peru unfortunately can not be placed in the third group.[2] But what is more germane to our purpose, the same Peruvian writer gives as the reason for the lack of a real republican government in Peru the excessive powers wielded by the executive, the "presidential absolutism," as he calls it.

Whether we consider Peru throughout the historical development of the republic, or whether we consider the actual government as it functions today, it must be conceded that for all practical purposes the terms government and president are almost synonymous. Until 1872, Peru was ruled by military presidents, and the great names among them, Gamarra, Salaverry, Santa Cruz, Vivanco, Castilla, were military dictators—men who, as García Calderón naïvely remarks, "wished absolute power in order to make possible the future education in liberty." Even Manuel Pardo, Peru's first civilian president, a reformer who insisted upon governing by constitutional means, carried out his program of reforms in the same vigorous

[1] James Bryce, *South America; Observations and Impressions* (N. Y., 1916), p. 541.
[2] V. A. Belaunde, *La Crisis Presente, Revista Universitaria*, 1914, vol. I, p. 406.

fashion in which he put down the revolt of Piérola. In fact, some of the periods when Peru has made the greatest progress have been those when a strong man has held the executive office and has compelled the adoption of his policies. Quoting another Peruvian writer: "It is the executive power in Peru which is the most visible, the most important, and which possesses the greatest influence and power in the internal and external life of the Republic.[3]

As we have already seen, the constitution of 1920 provides that the president of the republic shall be elected by direct popular vote. Nothing is said in either constitution or laws regarding the nomination of a candidate, so the parties may choose their candidates in any way that seems best.[4] As in most Latin-American countries, and as quite often in the United States, the president in power is in an excellent strategic position to pick his successor or to have himself reelected. It was the realization of this fact that caused the insertion in most of the Peruvian constitutions, including the last, a clause prohibiting the president from serving a second consecutive term. Even such restrictions are not always efficacious, and as already noted, the present constitution has been amended to allow a second consecutive term. The fact that such a change was made just before the time of election, and obviously for the purpose of permitting the immediate reelection of the president in office, is an indication of the real power of the president.

In a later chapter we shall consider election methods and the party system, so that at this point we need only discuss the presidential election in its general aspects. It can be easily understood that where the personal element plays such a large part, the campaign is likely to be quite violent. Both sides issue their platforms in the form of manifestos which are distributed broadcast and posted everywhere. However, the result of the election itself is for the most part a foregone conclusion. The party in power, or the party with the popular candidate, usually wins with an overwhelming majority.[5] Until 1896 the election methods were scandalous in the extreme, but during the presidency of Nicolas de Piérola certain reforms were introduced. The suffrage requirements were raised, and public voting with a duplicate signed ballot made for improvement in the system. Beginning with 1913, the supreme court was given power to intervene, and this innovation has had a very beneficial effect. However, in spite of these improvements, presidential elections are still likely to be periods of trouble, with a minority candidate badly handicapped.

The new election law of 1924 (law No. 4907) provides that the

[3] P. Dávalos y Lissón, *La Primera Centuria* (Lima, 1919), vol. I, p. 59.

[4] A convention of representatives of the civil, constitutional, and liberal parties nominated José Pardo in 1915.

[5] In the elections of 1924, President Leguía received 287,969 votes; all the other candidates together received but 155 votes.

balloting shall take place on the first Sunday in July and the following Monday, for president, senators, deputies, and regional representatives, simultaneously but on separate ballots. The ballots are all collected by the election boards of the districts and sent by them to the provincial boards of inspection, who in turn transmit the results of the presidential vote in their provinces to the secretary of the congress (art. 23). The constitution (art. 88) regulates the procedure from then on. The committee on credentials (*juntas preparatorias*), consisting of the entire membership of both chambers meeting jointly, opens the certificates of election, checks and certifies the votes cast for president, and proclaims as elected the citizen who has obtained the majority of votes. The committee on credentials in the years of presidential elections must meet a month before the opening of the congress; 60 per cent of the total membership of each chamber constitutes a quorum. The actual work of checking is done by a committee consisting of two senators and three deputies; this committee makes its report to the joint committee on credentials not later than the day before the installation of the congress. Once the report of the checking committee is made, the committee on credentials must sit continuously until it reports out the election of the president.

It has already been noted that the present constitution makes no provision for an election of the president by the congress in the case of no one receiving a majority. Under two conditions, however, provision is made for an election by the congress. Article 116 says that "in case of death or resignation of the president of the republic, the congress will elect within 30 days the citizen who shall complete the presidential term, and in the mean time the council of ministers shall govern." The article following provides that the congress shall also elect an incumbent to complete the term when for certain reasons the office is declared vacant.

The ceremony of inauguration is simple but impressive. Both the retiring and the newly elected presidents are notified by congressional committees to present themselves in the hall of congress on the day of its opening. Mounting the rostrum, the retiring president reads his annual message to the assembled congress. He then hands the presidential sash to the president of the congress, leaves the platform, and takes the chair prepared for him. The president of the congress thereupon calls the newly elected president to the platform, and after giving him the oath of office invests him with the presidential insignia. The new president then reads his message, which is a brief outline of his program, to the congress. The president receives no official notice of his election until a committee of the congress calls upon him to notify him that the congress is ready to receive him.

The qualifications necessary to be president are laid down in the constitution: (1) He must be a Peruvian by birth; (2) he must be an

active citizen; (3) he must be 35 years of age and have lived 10 years in the republic. No minister of state or military officer in active service may be elected president unless he shall have resigned his office 120 days before the election. The president's term is for 5 years, and according to the amendment to the constitution he may be reelected for a single successive term. Second-term presidents in Peru are not as common as in the United States, and only three have served two complete terms—Ramón Castilla, José Pardo, and Augusto B. Leguía. A number of others, however, have served a part of a second term, as, for example, Gamarra, Pardo, Piérola, and Cáceres. Señor Leguía, reelected to the presidency in 1924, has the honor of being the only man who has been elected to the first office in the land three times. He is also the first president who has served a second consecutive term, since, as we have seen, the various constitutions have been almost identical in this prohibition.

The constitution of 1920 provides that under certain conditions the office of president shall become vacant, and under certain others the president shall be suspended from the exercise of his powers. The office is rendered vacant by the death or permanent physical or mental incapacity of the occupant, the congress being authorized to make such a declaration; by resignation which is accepted; and finally, if the president shall have been declared by judicial decree guilty of treason, or of attempting to change the form of government, or of interfering with or hindering the congress from the exercise of its functions. Suspension occurs if the president shall take command in person of the public forces; if because of the temporary illness of the executive the congress deems it advisable; and finally, when the senate decides there is sufficient cause for bringing action against the president for the abuse of his powers in the cases cited above. If the office is declared vacant, the council of ministers governs until the congress shall have elected a new president to complete the term. In the case of suspension the council of ministers governs for the temporary period.

Like any other public official, the president is responsible for all acts performed in the exercise of his functions. To the congress is assigned the duty of enforcing this responsibility. In fact, the constitution specifically provides that the chamber of deputies may bring accusation against the president before the senate for any violations of the constitution or for any infringement of the laws committed in the exercise of his functions. (Art. 95.) However, the clause following provides that impeachment proceedings may not be brought against the president during his term of office, except for treason, attack upon the form of government, or for having dissolved or prevented the assembling of the congress or for having suspended its functions. For all other violations of the law in the exercise of his duties the impeachment proceedings are instituted after his term of office has

expired. For ordinary violations committed outside of the course of his public functions, action may be taken against him after his term has expired, just as against any other citizen.

The impeachment procedure is very similar to that employed in the United States. Any deputy may bring charges against the president in the chamber of deputies or any citizen by means of a written petition. The proposal or petition is read in two regular consecutive meetings. After the second reading the chamber, by an absolute plurality vote, decides whether or not the charges shall be admitted to discussion, the deputy bringing the charges having had an opportunity to establish the basis for the accusation. Admitted to discussion the case is sent to a committee of 5 deputies elected by the chamber. Copies of the charges are also sent to the accused. The committee must make its report within 15 days, attaching to it both the documents and the statements made by the accuser and the accused. This report is then discussed by the chamber and either approved or rejected by a majority vote. If the charges are approved, they are then laid before the senate with the documents appended and accompanied by this formula: "The chamber of deputies in the name of the republic accuses ——— before the senate and sends herewith the bases for the accusation." The chamber at the same time elects a committee of three of its members to support the charges before the senate. As soon as the senate receives a copy of the accusation it sends duplicate copies to the plaintiff and the defendant. It also names a committee of three members which, within 3 days after securing all necessary information, will report as to whether or not there are substantial grounds for the charges. The report of this committee is read in two continuous sessions and discussed publicly on the third day, the committee of the chamber which is supporting the accusation participating in the debate. After the discussion is concluded, the chamber committee withdraws and the senate in regular session proceeds to vote by absolute majority as to whether or not the charges are sustained, the result of this vote being published in the official journal.[6]

No president of Peru has ever had impeachment proceedings brought against him during his term of office and there are many reasons why the case is hardly likely to occur. In the first place, the average length of term of Peruvian presidents in its 100 years as a republic has been about 3 years. Under such circumstances there is hardly need for impeachment. Secondly, the revolutionary method of removing presidents who abuse their powers has been so effectively and commonly used in the Latin-American countries that impeachment, which after all is of Anglo-Saxon origin, will never be a really satisfactory substitute. Even in the United States, where the average

[6] Procedure determined by law of Sept. 28, 1868, *Responsabilidad de los Funcionarios Publicos*, chap. III.

term of office has been twice as long, and where it is the only way possible to remove a president, it has never been successfully employed. Finally, the Peruvian congress, by its check over the ministers, has a constitutional means of control over the executive which is much more likely to be effective.

However, although impeachment proceedings have never been brought against a president during his term of office, there have been efforts made to bring charges against a president after his term had expired. The most recent and best known example was the accusation brought in 1919 in the chamber of deputies against Ex-President José Pardo and all his ministers. The investigating committee was originally appointed to consider the case of Ex-Minister of Government Oscar Mavila, in connection with the closing up of the newspaper *El Tiempo*. However, the committee found Ex-President Pardo and his ministers equally guilty and the chamber accepted its report and appointed a committee to bring the action before the senate.[7] The senate thereupon appointed a committee to consider the case, and this committee reported that there was cause for accusation. However, no action was taken on the report and nothing further came of the matter.[8] It should be noted that the action taken against Ex-President Leguía by Deputy Miró Quesada in 1912 was of an entirely different character. It was merely a preliminary examination into the administrative acts of the executive at the close of his term of office which the constitution of 1860 (art. 59, sect. 24) authorized the congress to make.[9]

The powers of the president of Peru are so extensive that he has been compared to the czar of Russia and to the all-powerful *virrey* of colonial times. The constitution gives him broad powers, but custom, political influence, the prestige of the position, and the type of government increase their scope tremendously. Also, the fact that the parties in Peru are not well organized, and are inclined to make their campaigns upon personalities rather than principles, gives the successful candidate an extremely advantageous position. Therefore, if he be a man of strong will power, and one who has a real political program, he finds it difficult to avoid governing arbitrarily; the way is so invitingly open and the argument that the end justifies the means is always most persuasive.

As the chief executive of the state his first duty is to enforce the laws, and the constitution specifically provides that he shall see to the execution of the laws and the resolutions of the congress. As a corollary to this power he is authorized to issue decrees, ordinances, regulations, and instructions to aid in their execution. For example,

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[7] *Diario de los Debates, Cámara de Diputados, 1919*, pp. 261–296.
[8] *Diario de los Debates, Cámara de Senadores, 1919*, p. 405; *1920*, pp. 711–718.
[9] *Diario de los Debates, Cámara de Diputados*, 1912, p. 319.

the regulation for military pensions issued by President Leguía June 21, 1910, superseded those of September 18, 1895, in order to bring them into accord with laws 1041 and 1042. Although the executive departments are established by law, their organization is almost entirely based upon executive decrees. In fact, all the laws passed by congress are promulgated by means of executive decrees. After stating that the following law has been passed by the congress of the Peruvian republic, the decree then proceeds to give the text of the law, its date of passage, the order for its enforcement, and the date of its promulgation.

As a further exercise of his executive powers, the president is directed to give the orders necessary for the collection and investment of the public revenues in accordance with the provisions of the law. The constitution also seems to fix the full responsibility for such financial control upon the president by the clause which says that for any amount collected or invested contrary to law he who orders the illegal levy or disbursement must assume responsibility. The law of December 6, 1893, on the general budget lays down the specific procedure to be followed in financial matters, while the penal code (art. 343 ff.) fixes the penalties.

The constitution directs the president to require from the courts and judges the prompt and exact administration of justice, and to enforce compliance with the judgments and findings of the judicial tribunals. This does not mean, however, that he is to influence in any way the opinions or procedure of the courts. In fact, the separation of the powers is specifically laid down by article 69 of the constitution.

Certainly the most extensive if not the most important powers of the president are those which pertain to administration. Every phase of governmental activity—the protection of the state, its relations with foreign powers, the welfare of its citizens, the promotion of commerce and industry, the encouragement of education, the relations with the Catholic Church—all must be intelligently examined and a definitive policy outlined. Nor is there much opportunity in Peru to shift the responsibility. To the people of Peru the president is not a vague, indefinite power which directs the machinery of state, but a very definite, tangible personality, who can be approached, reasoned with, and appealed to, and whose decision possesses the final weight of authority.

No matter what question arises or how insignificant an administrative affair may be, it falls ultimately into the hands of the president, and it is he who must decide it favorably or adversely. From the minister to the lowest employee of the state, who must be seen in the despatch of some business which concerns the government, comes the same answer to the seeker desirous of results: "See the president, don't waste your time discussing the matter with me."[10]

[10] P. Dávalos y Lissón, *La Primera Centuria* (Lima, 1919), vol. I, p. 61.

The success or failure of a president or any other chief executive in either government or business depends to a considerable extent upon the ability of those associated with him. For that reason he must have a practically unrestricted power of appointment, and then be held responsible for the appointments made. The constitutions of Peru have always given the president very extensive powers of appointment, and the present one is no exception to the rule. In the case of ministers of state, his power of appointment and removal is greater than that of the president of the United States, for in reality his power is absolute; as far as constitutional law is concerned, he need receive the advice and consent of no one. This power as exercised is of vital importance in the Peruvian system, because it is the power which makes the government presidential instead of parliamentary. It is this unrestricted control over the ministers which practically nullifies the importance of the clause which states that all decrees and orders of the president must be signed by the appropriate minister. With this club over his head a minister must either sign or resign. In the same manner the clause which requires the resignation of a minister who has received a vote of lack of confidence at the hands of the chambers need not seriously interfere with the president's policies, since he can appoint another who will carry them out in a fashion still acceptable to him. A prolonged struggle between the executive and the congress is not to be thought of, because if precedent, prestige, and position are not sufficient the president still has the army.

This unrestricted power of appointing the ministers tends to limit the importance of still another clause of the constitution aimed at restricting the president's power. The last clause under article 121 gives the president the power to fill all vacancies whose nomination is vested in him in accordance with the constitution and the laws. By the law of February 19, 1863,[11] which is still in force, the president is directed to consult with the council of ministers in making all appointments to the diplomatic service and to the most important posts in the army and navy, in selecting the list of judges and prosecutors to be presented to the congress for appointment to the supreme court, and in naming prefects and certain other officials. Under the circumstances it can be seen that the "consultative vote" of the council of ministers need not interfere seriously with the president's choice. For a similar reason the law of December 4, 1856,[12] which declares that the president shall name each minister with the unanimous approval of the rest of the ministers, and if there be a total renewal he shall name the president of the council, who will submit a list of the others, imposes no insuperable barrier to the president's unrestricted choice of ministers.

[11] Arts. 3 and 4. [12] Art. 4.

The senate, which in the United States plays such an important part in the approval of executive appointments, is limited by the constitution of 1920 to the approval of only two groups of officials, namely, diplomatic ministers and the members of the council of state. However, as the council of state has never been appointed and appointments to diplomatic posts depend almost as much upon social as political qualifications, this limitation is of little consequence to the president's power of appointment.

In an address made at the opening session of the University of San Marcos in May 1914, Doctor Victor Andrés Belaunde pays considerable attention to the financial powers of the president. In fact, his conclusions seem to indicate that in spite of the various constitutional checks and the budget system the president enjoys an "exaggerated extension of the financial power."[13] However, it would be very difficult to find any presidential system with an executive budget where the president's financial powers are not exceedingly broad. Unless this were so it would be impossible to place the responsibility for the financial policy of the government upon the president. Inasmuch as we shall consider the Peruvian budget system when we come to the study of the administrative departments, at this point we need only note the various financial powers vested in the president.

In regard to the budget itself, it is the president's duty, with the minister of finances, to make the final adjustments before it is presented to the council of ministers for approval. It is then presented to the congress. It is to be expected that his opinion would count for much in the final determination of both income and expenditure, and also that there would be certain sums set aside for his discretional use. However, inasmuch as the congress must approve an itemized account of the expenditures of each department separately, and the president may issue no orders for payment except through the ordinary channels of the treasury and audit departments, the president's power over the budget would seem to be no greater than necessary for an efficient administration.

We have already noted the president's jurisdiction over the collection and investment of the public revenues. Also, it will be remembered that the president has the power of initiating legislation, and usually bills contemplating new imposts or changes in the old emanate from the government. Among the other financial functions of the executive is the power to contract loans and grant concessions which have been sanctioned by the congress, and to grant licenses and pensions in accordance with the laws.

The first power which is assigned to the president by the constitution of 1860 is to preserve the order at home and the safety abroad of the

[13] *La Crisis Presente, Revista Universitaria* (May 1914), p. 407.

republic. Although the new constitution gives this power third place, the identical wording is maintained. In order to protect the republic, the president is further authorized "to organize the forces of sea and land; to distribute them and make such disposition of them as is necessary for the service of the republic." Through this grant of power the president, in conjunction with the ministers of war and navy, may assume the control and direction of the national defence. There is one restriction, however, namely, the president may not command personally the armed forces, except by the consent of the congress. In case he assumes such command, he holds the position of general-in-chief, subject to the laws and military ordinances and is responsible in accordance with them. Under such circumstances his exercise of the presidential office is suspended and its functions are taken over by the council of ministers. The declaration of war issues from the congress through the initiative or advice of the executive. It should also be noted that the constitution grants no extraordinary powers to meet the emergencies of war. All dispositions for the national defence must be made in accordance with the laws.

Although, as has been noted above, the constitution, in assigning powers to the president, authorizes him "to organize the forces of sea and land," (art. 121, sec. 11), a later clause (art. 144) declares that the public forces shall consist of the army and navy organized in accordance with law, and that its size and the number of generals and officers shall also be established by law. Considering the two clauses together, it would seem that the intent of the makers of the constitution was clearly to limit the power of the executive to organize the quotas already established by law. In fact, article 145 specifically provides that the public forces may not be augmented or diminished except in accordance with law. The president is also restricted somewhat in his appointments to the army and navy. The constitution provides that the president may nominate generals, admirals, rear admirals, colonels, and captains of the navy, but congress possesses the right to approve or disapprove of the nominations. Nor may the president nominate or the congress approve promotions except in case of vacancy.

Closely allied with the president's war powers are his powers in foreign affairs. Here we find the powers of the president of Peru very similar to those of the president of the United States. Although nowhere in the Peruvian constitution is it expressly stated that he shall direct the foreign policy of the republic, this power may be derived readily from other powers which are expressly granted. In the first place, he is given the power to direct diplomatic negotiations and to negotiate treaties with foreign states, with the expressed reservation that such treaties must be submitted to the congress for its approval. For the approval of treaties both houses meet together and a majority vote is sufficient. It is very rare that a treaty fails to win the approval

of the congress, but as Minister of Foreign Affairs Salomón has pointed out, on certain occasions, as, for example, the García-Herrera treaty of 1892 with Ecuador, important modifications have been made. It can readily be seen that with the improvements in communication made in the past half century all diplomatic negotiations can be directed personally by the president if he so desires. However, it should be noted that the president of Peru may not go abroad to conduct diplomatic negotiations as did President Wilson, unless the congress shall give its consent (art. 123). In the second place, through his annual message to congress the president can outline his foreign policy and without much difficulty secure the support of the congress to it. And finally, the minister of foreign affairs may appear before the chambers to answer questions, explain the situation, or outline a policy, and in the case of a declaration of war or severing diplomatic relations ask for a vote of approval. For example, after the sinking of the *Lorton* by a German submarine, the minister of foreign affairs appeared before a joint session of the congress, outlined his negotiations with the German government, and concluded with a request for a vote of approval to the government's decision to break off diplomatic relations.[14]

A direct corollary to the president's power to direct diplomatic negotiations is his power to appoint and remove all diplomatic agents. The constitution of 1860 gave him practically a free hand here, but the present constitution requires that the names be sent to the senate for their approval. However, up to the present time there has been no occasion when such sanction has been refused. Of greater importance than naming foreign ministers is the president's power to receive foreign ministers. For through this power the President has tremendous influence over the foreign relations of his country. It is entirely within his power to break off diplomatic relations with a country by demanding the recall of its representative or dismissing him outright. He may also accord recognition to a new state or to a *de facto* government by receiving its diplomatic representative, and there are occasions when such recognition is practically equivalent to a declaration of war.

The relations of the government of Peru with the Roman Catholic Church are very close, for, as we have already seen, by constitutional provision "the nation professes the Roman Catholic Apostolic faith and the state protects it" (art. 5).[15] By the papal bull of 1874, the Holy See granted to the president of the republic the right of the patronage under the same conditions enjoyed by the kings of Spain. In accordance with this privilege, the constitution provides that the president may exercise the patronage in accordance with the laws

[14] *Diario de Los Debates de las Sesiones de Congreso, 1917*, p. 63.

[15] For a concise treatment of the relations between the Church and State see L. F. Villarán, *La Constitución Peruana* (Lima, 1899), pp. 75–87.

and existing practices. In the selection of archbishops and bishops the president nominates twice as many as are to be chosen and presents this list to the congress. The congress thereupon elects and the president presents the names of those elected to the Holy See. In the same way the president nominates the various dignitaries of the church which are chosen by the bishops, the only restriction being that they shall be of Peruvian nationality. The constitution also permits the president to celebrate concordats with the pope in accordance with the provisions laid down by the congress and subject to the approval of congress. This same privilege was granted by the constitution of 1860, but up to the present time no concordat has ever been negotiated. Finally, the president, with the consent of the congress, possesses the authority to refuse or grant permission to the observance of papal bulls, conciliar decrees, and pontifical briefs and rescripts.

In spite of the specific provision in the constitution of Peru for the separation of the powers, the president enjoys extensive legislative powers both in law and in fact. Some of these functions are only indirectly concerned with the legislative branch of the government, while others have a vital influence on the course of legislation. In the first group we might class the power of calling both general and special elections. This power is of little importance, because if the president fails to exercise it the congress is empowered to see that the elections are held. Under the same category might be placed the president's power to convoke the ordinary session of the congress. Here again it is provided that the congress shall assemble in ordinary session on June 28, though the president fails to convoke it.[16] However, in the case of special sessions, the president may exercise a certain amount of legislative influence. No special session may be held except upon the call of the president, and in his call he lays down a definite program of subjects which he desires the congress to consider. In fact, the call has at times attempted to limit the discussion to the questions submitted, but inasmuch as the constitution of 1860 made no such restriction, the chambers were accustomed to consider not only the subjects proposed, but any others which suited their fancy. The constitution of 1920 settles the question by stating that extraordinary sessions shall have the same prerogatives as ordinary sessions. The president is practically forced every year to call extraordinary sessions, because it very rarely happens that the congress approves the budget in the ordinary session. During the period from 1900 to 1920 there were 24 extraordinary sessions of the congress, the year 1917 leading the list with 5 special sessions.

Another way in which the president may influence legislation is

[16] A transitory clause of the constitution of 1920 provides that in 1924 the congress shall come together October 12.

by his annual message to the congress. This is customarily delivered in person by the president at the opening of the ordinary session of the congress. The messages are very similar to those delivered by the presidents of the United States, though on the whole somewhat longer and somewhat more replete with statistical and technical details.[17] The various branches and services of the government are taken up seriatim, the existing situation presented, the problems considered, and usually the discussion concluded by recommendations or suggestions to the congress. The messages are published in the principal newspapers and have therefore considerable political importance. On the whole they furnish an excellent summary of the government's political program both as to intentions and accomplishments. Special messages are not nearly so common as in the United States and are sent only upon occasions of great and urgent importance. For example, in 1898 President Piérola called both houses into joint session and read a special message urging the immediate consideration of the Billinghurst-La Torre protocol covering the question of Tacna and Arica.[18]

Of still greater importance is the clause of the constitution which gives the president power "to take part in the formation of the laws" (art. 121, sec. 6), and the clause which states that projects for laws may be presented by a minister "in accord with the president of the republic" (art. 130). Thus by the constitution itself the president is given the very important power of initiating legislation. Not only is he permitted to introduce bills, but inasmuch as the ministers may participate in the debates of the chambers, he has an excellent opportunity to furnish explanations, advance arguments, and in various ways smooth the road for a prompt and favorable consideration of his measures. As might be expected, a large number of important legislative measures have their source in the department of the executive.

Finally, the president has a suspensive veto power over all legislation except that pertaining to the organization of the legislative body and its relations with the executive. The constitution provides that as soon as a law is passed by the congress it shall be sent to the executive in order that he may promulgate it and see to its enforcement (art. 104). However, if he has certain observations to make in regard to it, he may return it with such comments to the congress within a period of 10 days. The bill must be then reconsidered by both houses and if in spite of the observations of the executive it is again approved, it is considered as enacted and must be promulgated

[17] As an original means of stimulating popular interest, the illustrated weekly *Mundial* started a prize contest in the summer of 1924 for guessing the number of words that would be used in President Leguía's next presidential message.

[18] *Diario de los Debates, Cámara de Diputados, Congreso Extraordinario de 1898*, p. 11.

and enforced; but if it fails of approval, it may not be considered again until the next legislative period. In case the executive fails to return the bill within the 10 days, it thereupon becomes law; and if he fails to promulgate it this task devolves upon the president of the congress.

We have already noted that in order to execute the more effectively the laws and resolutions passed by the congress, the president is authorized to issue ordinances and decrees. This power is in actual practice of such importance that it assumes the aspect of secondary legislation. The ordinance power is an essential attribute of any executive, for by the very nature of the case the law must often times be couched in general terms. But once the legislative power is delegated, it is extremely difficult to place limitations on its exercise The scope of its range must necessarily be somewhat flexible. Therefore this power is one which is very easily subject to abuse. A glance through any collection of organic laws of Peru will make it evident that some ordinances and decrees have all the aspects of very important legislation. In fact, a well-known student of Peruvian law declares that "among us are many ordinances which present all the generality, all the permanence of laws, and they even go so far as to define and alter rights which are wholly outside of the jurisdiction of the executive power."[19]

When we come to the relations between the executive and judicial powers in Peru, again we see that the executive has both direct and indirect means of exerting influence. However, generally speaking, the judiciary is undoubtedly more independent of executive control than the legislative branch. The president's appointive power here is considerably restricted, for in the case of the justices and prosecutors of the supreme court, he, after consulting with the council of ministers, merely sends a list of nominees to the congress. From this list, which must contain 10 names for each appointment to be made, the congress elects. In the case of the superior courts the process is reversed, the supreme court nominating a list of 6 names for each position and the president selecting. Inasmuch as appointments usually are equivalent to life terms, the courts are comparatively free from political influences.

However, there is one clause in the constitution which has been criticized as violating in unnecessary fashion the separation of powers.[20] Article 121, section 9, gives the president authority to require from both judges and tribunals a speedy and impartial administration of justice. The question might properly be raised as to whether this permits the executive to determine what constitutes a speedy and impartial administration of justice. If it could be so interpreted, it is a flagrant violation of the separation of the powers. Doctor M. V. Villarán, in commenting upon this phrase, declares that it does

[19] F. León y León, *Tratado de Derecho Administrativo* (Lima, 1897), vol. 1, p. 107.

[20] See F. León y León, *Tratado de Derecho Administrativo* (Lima, 1897), vol. 1, p. 102; also M. M. Vásquez, *Estudio de la Constitución Peruana* (Lima, 1898), p. 143.

not mean that authority is granted to influence in any way the opinion of the court or to interfere with the order of the proceedings or the course of the sentence.[21]

In addition to these many and varied political functions, the president is burdened with numerous economic and social functions. Every project of commercial exploitation, plans for roads, bridges, highway and railroad construction, irrigation schemes, educational programs, the introduction of better measures of health and sanitation, the amelioration of the conditions of the Indians, in fact every project looking towards the development, betterment, or expansion of the country's interest must receive his attention. He must preside at banquets, he must lay the cornerstones of public and important private buildings, he must attend all diplomatic functions, he must be present at important social gatherings, he must receive all the distinguished foreigners who visit the capital, and is expected to give audience to numerous others. And not only in Lima is he expected to participate in every important phase of the nation's life, but through the prefects and subprefects he must keep in intimate touch with every aspect of the country's interest from Piura to Arequipa.

Considering the size and wealth of the country and the terrific labor and strain which the president must endure, his remuneration seems hardly adequate. His own personal salary is but £p3,000 (about $14,500) a year. In addition to this, an expense allotment of approximately £p13,500 is provided, distributed in the following fashion: military establishment, £p3,930; secretariat of the president, £p2,264; upkeep and maintenance of the palacio, £p6,946.[22] The constitution declares that the president's salary may not be increased during his term of office.

But after all, the salary is the least important part of the presidential office. Its real importance, particularly in Peru, lies in the tremendous power which is actually vested in the president's hands. In spite of the many constitutional restrictions, the president of Peru may rule as despotically as any tyrant of ancient times. The prestige of the position, the Latin-American habit or custom of looking towards the president rather than to the congress as the real government, the party system built up upon personalities rather than issues, all tend to strengthen his position of leadership. It is largely within his power to determine whether or not his country will maintain its position among the progressive states of the Western Hemisphere. The general welfare, the economic development, the political progress, and the material prosperity of the state depend to a large extent upon his ability. The responsibilities of the position are indeed tremendous, but even greater are its possibilities.

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[21] *Programa Detallado de Derecho Constitucional* (Lima, 1920), pt. II, p. 107.
[22] *Presupuesto Général, 1923*, pp. 23–24.

CHAPTER IV.

THE CABINET AND ADMINISTRATION.

Beginning with the *estatuto provisional* promulgated by General San Martín in 1821, every constitution of the Peruvian republic has specifically provided for ministers of state. In fact, the provisions covering the ministers of state as found in the constitution of 1823 are not fundamentally different from those found in the constitution of 1920. Although most of the early constitutions were very brief in their provisions regarding the ministers, leaving to congress the organization of the administrative departments, no law was passed on the subject until 1856.[1] This law was very materially altered by the law of September 26, 1862, and since that time a number of other laws have been passed making slight alterations. However, the laws of 1856 and 1862 still remain the two principal organic laws on the ministers.[2]

As we have already seen, the ministers of state in Peru do not constitute a cabinet which is the real seat of governmental authority, as in the parliamentary systems of Great Britain and France. Neither are they merely advisers to the president and heads of the administrative department, as are members of the cabinet in the United States. However, they resemble the latter much more closely than they do the former, the principal difference being that they may appear before the congress, and are personally and collectively responsible for their acts to the congress as well as to the president.

The functions and purpose of the ministers in the Peruvian system of government have been well summarized as follows:

(1) To limit the personal power of the president, forcing him in all his administrative acts to work in harmony with the department concerned, and in exceptional cases to obtain the consent of the council of ministers.

(2) To insure responsibility for the acts of the executive, who is practically irresponsible during his term of office, by creating at his side functionaries who must answer for any illegal acts of the government.

(3) To give the president counselors who may aid him with their opinion and advice that he may perform the more effectively the duties of his office.

(4) To give the president collaborators who may aid him in the tasks of the government.

(5) To place at the head of the public services chiefs and directors who in cooperation with the president, or by themselves alone in some cases, may carry on their respective branches, and watch over and direct their subordinates in the exercise of their functions.

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[1] For a brief historical sketch of the establishment of the ministries see Pradier Fodéré, *Compendio del Curso de Derecho Administrativo* (Lima, 1878), pp. 147–150.

[2] For the text of these laws and subsequent modifications see G. U. Olaechea, *La Constitución del Peru y Leyes Organicas* (Lima, 1922), pp. 413–437.

(6) To create an organ of union between the executive and the chambers, by means of which the government may put itself in touch with the congress, both to transmit to the latter the governmental projects, together with information and suggestions, and in return to receive from the legislative branch its ideas and opinions.[3]

The constitution lays down the same qualifications to become a minister of state as to become a deputy, namely, Peruvian birth, active citizenship, and 21 years of age. The procedure for naming the ministers on the other hand is still regulated for the most part by the law of 1862. In case of a total renewal of the ministry, the president names the president of the council of ministers and designates which portfolio he shall assume, this act being approved by the ranking official of any one of the departments. Thereupon the president of the council of ministers draws up and presents to the president a list of the persons who in his judgment should be named as ministers. If the president accepts these nominations he immediately issues a decree naming them and assigning them portfolios. This decree is signed by the president of the council. This is exactly the same procedure that is followed in the parliamentary system in France, but where in France, after naming the premier, the choosing of the cabinet is wholly out of the president's hands and his approval automatic, in Peru the president's approval is one of fact as well as form. In some respects even the president of the United States is more restricted in his choice of ministers than the president of Peru, because, the former must take into consideration both geographical location and party ties.

In case one or more ministries become vacant the president of the council of ministers with the approval of his colleagues proposes to the president the names of the person or persons who should be appointed to the vacancies. After the president makes the appointment, the circular note of announcement is signed by the president of the council. It is expected that vacancies in the ministry will be filled the same day that they occur, even though the appointment be but temporary. Only in cases of absolute necessity should a vacancy be held by another minister. However, in the case of absence, a portfolio may be taken over for a period of not more than 30 days, but after this time has expired the vacancy may not be filled successively by the other ministers. Only in cases of sickness or when a minister is a member of some commission requiring his sole attention may a substitute serve more than 30 days; in such a case the office may be held temporarily until the return of the minister. It goes without saying that neither the constitution nor the laws fix a definite term of office for a minister.

The number of administrative departments and their organization

[3] M. V. Villarán, *Programa Detallado de Derecho Constitucional* (Lima, 1920), part II, p. 60.

has been left entirely to law, and by the law of 1862 five departments were established: foreign relations, government, justice, war and navy, treasury and commerce. A sixth department was created by the law of 1896, known as *fomento* or development, which included the branches of public works, industries, and charities. Somewhat later the bureau of charities was put under the department of justice. Finally, in 1919 the department of war and navy was reorganized and a new department known as the ministry of marine was established.

As in the United States, the department of foreign affairs is usually regarded as first among the departments, and its minister is quite often named president of the council of ministers. If he does not hold this position he always ranks next to the president of the council. Although there has always been a department of foreign affairs,[4] the two earliest laws specifically organizing this ministry were those of December 4, 1856, and September 26, 1862, The ministry of foreign affairs was authorized to take jurisdiction over the following subjects: international treaties; concordats, conciliary decrees, papal bulls, and apostolic briefs; the direction of diplomatic relations; the appointment and removal of diplomatic and consular agents; correspondence with foreign governments and their public agents; instructions to the diplomatic and consular agents; the protection of nationals in foreign lands; the control of passports; and the verification and validation of contracts made abroad.

The ministry of foreign affairs as organized to-day consists of a minister, an undersecretary, a master of ceremonies, and five chiefs of sections, namely, diplomatic, consular, ciphers and cables, archives and files, and accounting.

The functions of the minister of foreign affairs are similar to those performed by this official in other countries. It is he who cooperates with the president in directing the foreign policy of the government. He has a regular conference with the president every week, when all routine matters of his department are discussed, and it is at these conferences that the president usually signs all the documents, such as resolutions, important letters of state, credentials and full powers to Peruvian diplomatic representatives, instruments of ratification of treaties, extradition decrees, exequaturs, and similar papers which must receive the signature of the chief of state to make them valid. At these conferences both the undersecretary and usually the chiefs of the sections are present. The minister also reserves one afternoon a week to receive the members of the diplomatic corps.[5] The minister

[4] The ministry of foreign affairs was created by the Protector San Martín by his decree of August 3, 1821.

[5] An excellent summary of the organization and functions of the ministry of foreign affairs may be found in A. G. Salazar and J. Linch, *Guia Practica Para los Diplomaticos y Cónsules Peruanos* (Lima, 1918), vol. 1, pp. 7–47.

presents an annual report of the work of his department to the congress each year which is known as the *Memoria del Ministro de Relaciones Exteriores.*

The undersecretary (*oficial mayor*) is the minister's chief aid and assistant in all the routine matters of the department. Besides this, he has certain special duties, such as full jurisdiction over the Peruvian consular service and the supervision of the publication of the *Boletin.* The *Boletin del Ministerio de Relaciones Exteriores*, to give it the official name, is a publication issued from time to time by the department, giving such diplomatic and consular correspondence and official documents as the chancellery deems it wise to publish. Its publication began in 1904 and the latest issue, No. 66, appeared in 1922.

The master of ceremonies (*introductor de ministros*) is in charge of what is known as the protocol service (*servicio del protocolo*). He is the official representative of the chancellery in all affairs which have to do with the ceremonial and etiquette of diplomacy. He officiates at all audiences which the president and minister have with the diplomatic corps and accompanies the minister on his visits to foreign legations. He welcomes foreign diplomats at the port and sees to the free passage of their goods through the customs. It is also his duty to draw up and despatch all credentials and full powers and to prepare drafts of treaties, conventions, protocols, and all other such documents of the department.

The diplomatic section has as its principal function the drafting and editing of all diplomatic correspondence, while the consular section exercises the same functions in its field. The section of ciphers and cables codes and deciphers the secret correspondence and drafts the secret and confidential documents of the department. The section of archives and files sends, receives, classifies, and files all the diplomatic correspondence and documents of the department. The section of accounting prepares all the accounts of the department for the budget.

The ministry of foreign relations is very fortunate in being housed in the Torre Tagle Palace, perhaps the most beautiful and artistic relic of the Moorish architecture of the colonial period. After years of patient and careful work the government has restored this building to its ancient beauty, and as a delicate token of courtesy to the foreign nations has turned it over to that branch of the government which receives their representatives.

Linked up with the ministry of foreign relations established by San Martín in 1821, was the department of state, known under the constitution of 1823 as the department of government. Except for a few short intervals, these two departments remained together until the law of December 4, 1856, reorganized the administration and

established as a separate department the ministry of government, worship, and public works. A resolution of October 13, 1859, separated the religious branch from the other two and added it to the ministry of foreign relations. Shortly afterwards the law of September 26, 1862, once more reorganized the administration and turned over the control of the police to the department of government. As then organized, it had under its general direction and control such subjects as public order and private rights; departments and municipalities; police and gendarmery; administration of the postal service; the control of roads, bridges, canals and rivers; projects of irrigation and drainage; the protection of agriculture, industry, and the exploitation of mines; in fact, it included everything pertaining to the internal management of the country. The law of April 30, 1873, again reorganized the department, and the law of January 22, 1896, which established the ministry of development, withdrew the control of public works from the ministry of government and turned it over to the newly established department. Two more laws must be noted before we reach the present organization, namely, the law of January 16, 1906, which made posts and telegraphs a separate section, and the law of August 7, 1919, which reorganized the police.

As organized today, the ministry of government consists of three divisions: government and municipalities, police, posts and telegraphs. The division of government and municipalities is subdivided into four sections: government and municipalities, audits and accounts, archives and files, and information. Under this division comes everything pertaining to the internal political life of the state. Here we find the whole elaborate prefectoral system; the control of elections is vested in this division; here also is the state printing office, which prints the various reports of the department and also publishes *El Peruano*, the official daily record of the government. The *Anuario de Legislación Peruano*, an official compilation of all laws passed by the congress, is also published by this department, and when possible printed by the state printing office, but the capacity of the latter is so limited that much of the official printing is done by private firms.

The division of police or, to give it its official title, *Direccion General de la Guardia Civil y Policia*, is also subdivided into sections. According to the law of 1919, these six sections include the police of Lima, the section of vigilance and passports, the gendarmerie of Lima and the republic, administration, paymaster and accounts, public assistance. In common parlance the police system consists of two divisions, the *Guardia de Seguridad* or police force of the cities and the *Guardia Civil* or rural constabulary. A school of police has recently been established under the general supervision of a mission from Spain.

The division of posts and telegraphs, which also includes radiotelegraphs, is by contract under the general direction of the Marconi

Company. It is interesting to note that this branch of the service, which had a deficit of over £69,000 in 1920, had reduced the deficit to about £23,600 in 1922, while on June 30, 1923, it showed a surplus of over £12,000.[6]

The ministry of finance was also one of the original departments established by San Martín. Although like the other ministries its organization was left to law, practically every constitution beginning with the constitution of 1828 has devoted at least one paragraph to the minister of finance. The substance of these provisions in each case is that the minister of finance shall make a report to the congress annually on the financial condition of the country and at the same time present the budget for the ensuing year. The constitution of 1920, however, makes two qualifications; first, that the budget be presented with the approval of the council of ministers, and second, that it be presented in the month of August each year. The whole cabinet is held responsible for any failure to carry out this provision.

The budget has received considerable attention at the hands of the lawmakers, and until recently the principal legislation on the subject has been the organic laws of September 16, 1874, October 25, 1893, October 30, 1895, and the executive decrees of February 15, 1879, January 31, 1896, and July 17, 1915. However, the most important law on the subject at the present time is the organic law of December 23, 1922, which controls the budget system as now organized.[7]

By the terms of this law the general budget must list all the income and expenditure of the state in a single document. The budget is divided into three parts—income, expenditures, and balance. On June 1 of each year the minister of finance announces his estimates of income from various sources to other ministers, and not later than July 15 they must return a statement of their expenses and the amounts required to carry on their departments. The legislative chambers also formulate their budget before August 15. The minister of finance, with these estimates to guide him, formulates a project of the budget, and after it has been discussed and approved by the council of ministers it is submitted with an explanation and documents attached to the chamber of deputies. This must be done not later than August 31. A copy goes to the senate at the same time. During the discussion of the budget the minister of finance is expected to be present in the chambers, just as are the other ministers when their departments are being discussed. The law further provides that the minister of finance must also submit the general financial report of the government for the fiscal year not later than August 31. The chambers, at the installation of their ordinary sessions, appoint a

[6] *Memoria del Ministro de Gobierno y Policia* (1923) p. LXXXI.
[7] For text see *Presupuesto Général Para el Año 1924*, pp. 5–8.

committee of 5 deputies and 3 senators to examine this account and make a report on it to their respective chambers.

The law of December 4, 1856, which organized the department of finance, gave it a certain amount of control over commerce, and therefore named it the ministry of finance and commerce. Its jurisdiction as established by this law included the collection and expenditure of the public revenues; the control of the mint and the treasury; the administration of all the public properties of the state; the funding of the public debt; the control of the customs and certain functions of a commercial nature. The department to-day still retains the dual jurisdiction of finance and commerce.

The present organization of the ministry of finance and commerce is approximately as follows: At the head is the minister whose principal function is to aid the president in shaping the financial policy of the government, preparing the budget, and explaining and supporting it in congress; under him is the director general of finance, who acts as technical head of the department, and also controls the sections of national properties, and archives and files; next there are the directors of five other divisions known as accounts, treasury, public credit, contributions, and statistics, each of whom has various chiefs of sections under him; finally, there is the director of the mint and his assistants, the entire customs service, the service of the public debt, and the control of various national monopolies and financial companies. In 1922 the Peruvian Reserve Bank was established, modeled to a considerable extent upon the Federal Reserve Bank of the United States. In fact, Fernando C. Fuchs, who was largely instrumental in preparing the original plans for the bank, made a very careful study of the American Federal Reserve system before making his report as minister of finance urging its adoption. The bank has a capital of £2,000,000, one-half held by banks and one-half by the public. All national banks and foreign banks in the country are members,[8] and the board of directors consists of the minister of finance, 3 directors named by the government and 6 named by the member banks.[9] The report or *memoria* of the minister of finance and commerce is usually the most elaborate of those presented to the congress by the departments, and the one presented to the congress of 1922 with its annexes contained over 2,200 pages.

The third and last ministry established by San Martín by his decree of August 3, 1821, was the war and navy department. As created by the law of December 4, 1856, the minister of war had jurisdiction over everything pertaining to the national guard, the army, the navy, the

[8] The Lima branch of the National City Bank of New York is not a member, owing to the banking laws of the United States.

[9] See law No. 4500, *Banco de Reserva del Peru*, *El Peruano*, March 17, 1922.

morality and discipline of the public forces, the maintenance and repair of the military establishments, including professional education for the army and navy, the sanitation corps, the military engineers, the arsenals, and the commissariat. The department was reorganized by the law of February 6, 1879, and by a number of executive decrees issued by President Pardo, February 1, 1916. Finally, by the executive decrees of August 5, 1919, issued by President Leguía, the navy was separated from the army and established as an independent ministry. Another executive decree of President Leguía dated September 26, 1921, gave the navy its present organization.

As organized to-day the ministry of war consists of three divisions: the military cabinet, the general staff, and the central administration. The military cabinet has jurisdiction over all the political phases of the department, of all relations with the chambers and the other ministries and with the judicial authorities; it has also under its jurisdiction the general, technical, and informational services. The military cabinet is subdivided into a chief office (*jefatura*) with a chief of cabinet in charge, a first section of personnel, a second section of administration, a third section of recognition of services, and the archives, files, and information. The general staff has charge of all matters relating to the army—its personnel, matériel, discipline, instruction, recruiting, mobilization, promotion; also the functioning of the various branches, and the preparation of plans of campaign, and anything else which might be necessary in times of war. The general staff consists of a chief, an under chief, 3 directors of branches (infantry, artillery, cavalry), and 4 chiefs of sections: first, personnel, organization, and mobilization, second, information, third, regional highway conscription, and last the archives and files. The central administration has charge of the department budget, of accounts, of all contracts for equipment and provisions, and is in control of all the arsenals and supplies. In addition to these divisions and controlled by them, we have such services as engineering, sanitation, geographical, veterinary, etc. Finally, as essential adjuncts there are the military school, the aviation school, and the aviation service. At the present time the general military policy is being directed by a French military mission, and the chief of staff is also a Frenchman.

The organization of the army itself is largely based upon the law of June 21, 1912. The law provides for obligatory military service for all Peruvians from the ages of 21 to 50 years, active service lasting from 21 to 25. As the government is able to utilize only a part of this number, contingents are drawn by lot for 2-year service. It is a quickly noticed fact that the whites are never drawn for military service in the ranks. Those holding the lowest numbers of the contingent drawn up to the number required are inducted into active service, the rest are classed as mobilized forces and are subject to call

for instruction for a maximum period of 2 months every 2 years. The active and mobilized forces are known as the permanent army. All Peruvians exempted from military service between the ages of 21 to 26 years and all Peruvians from 26 to 30 years are regarded as the reserve of the permanent army. All Peruvians from the ages of 31 to 50 years are in the territorial army. Every Peruvian young man reaching the age of 21 years must be inscribed in the military register.

As already noted, the ministry of marine was established by President Leguía's decree of August 5, 1919, and its present organization is based upon the executive decree of September 26, 1921.[10] In addition to the minister, it consists of a general staff, a division of personnel, a division of matériel, and a division of administration. The functions of the general staff are to give counsel and advice to the minister of marine on questions of policy, equipment, and administration, to direct all tactics and naval operations, to prepare all regulations and general orders, in fact to control all operations of the navy. The division of personnel has charge of all matters pertaining to the personnel of the navy, with particular emphasis upon hygiene and sanitation. The division of matériel attends to the care and repair of all naval equipment, both on land and sea, including hydrographic and light-house services. The division of administration has charge of all purchases, payments, and accounts.

The navy at this time is under the general direction of the American naval mission, headed by Rear Admiral C. W. Woodward. He acts as chief of the general staff and his assistant chief of staff is Captain Charles Gordon Davy, also of the American mission. Captain Davy is also director of the naval school at La Punta, which under his efficient direction now ranks as one of the model naval academies of South America.

The ministry of justice and ecclesiastical affairs was first created June 1, 1826, by a decree of the council of government. However, until the law of December 4, 1856, its life was fitful and irregular. By the provisions of this law a department known as the ministry of justice, instruction, and charity was established with jurisdiction over the following subjects: the administration of justice, the control of penitentiaries and penal institutions, the codification of laws, the direction of studies and all institutions of learning, the administration of museums, libraries, and historic monuments, the control of hospitals and charitable institutions, and the general direction of all matters relating to the betterment of health and living conditions. The law of September 26, 1862, added the branch of public worship to this depart

[10] For the text of this decree, which gives a clear and concise plan of the reorganization, see the *Memoria del Ministerio de Marina de 1922*, pp. 3–9.

ment, and it was then known as the ministry of justice, worship, public instruction, and charity, the name which it bears to-day, except for a slight change in order. The department was reorganized by the law of August 20, 1872, and when the ministry of development was established in 1896 it took over the division of charity from the ministry of justice. However, a new law of reorganization promulgated February 9, 1910, restored the division of charity to this department.

The department of justice, instruction, worship, and charity as organized to-day consists of the minister and the two general divisions of justice and education. At the head of the former we find a director general of justice, whose staff is divided into the section of justice and penal institutions, the section of worship and charity, the general accountant's office, and the bureau of archives and files. The administration of the entire system of courts, prisons, correctional schools, and the penal colony falls under the general direction of the first section. The second section has charge of the archdiocese of Lima, the dioceses of Trujillo, Chachapoyas, Ayacucho, Cuzco, Arequipa, Puno, Huánuco, Huaraz, Cajamarca, the vicarship of Madre de Dios, and the various missions and hospitals controlled by the church.

The question of education has received a considerable amount of attention at the hands of the government recently, and the administration of this branch as laid down by the law of February 9, 1910, has been completely changed. Its present organization is based primarily upon the organic law of instruction of June 30, 1920, with some important modifications introduced by the law of February 9, 1924, and the basic regulations decreed by President Leguía on April 12, 1924.

The whole educational system, except for the universities and technical schools, is placed under the jurisdiction of a national council of education of 8 members, 4 named by the government and 4 representing the various groups of educational institutions of the state. It is presided over by the minister, and has as its secretary the director general of education. The function of this council is to fix and carry into practice the educational policy of the state, and to accomplish this it has large powers of appointment and removal, direction and regulation. The administrative machinery established to carry out the policies of the Council consists of a director general of education, a director of examinations and studies, a director of properties, rents, and accounts, and a director of personnel and statistics, each with a necessary staff of assistants. In addition to their respective individual administrative duties, the four directors act as an economic council of education to control all the educational properties, buildings, and disbursements of funds for Lima and Callao and to designate councils to carry on similar functions in the rest of the republic. Doctor

Alberto A. Giesecke, the present director general of education, is an American who came to Peru in 1909 to organize commercial education. In 1910 he was sent to Cuzco to reorganize the university and served its president for 14 years. He was appointed to his present position in December 1923, and is now engaged in carrying out the new policy of centralization contemplated by the organic regulation of April 13, 1924.

The last of the ministries to be established was the ministry of development (*fomento*), created by the law of January 22, 1896. As the law itself says, "the necessities of good public service require the creation of a new ministry," and the jurisdiction as laid down by the law included public works, industries, and charities. The work devolving upon the department increased so rapidly that by the law of January 21, 1910, the section of charity was returned to its original place in the department of justice. It would be merely confusing to cite the many laws which have constantly widened the scope of the work of this department, because as it exists to-day it has jurisdiction over a wide and varied assortment of subjects. An outline of its present organization will give an idea of the scope of its activities.

Under the minister there are 6 divisions, each one headed by a director: development and dependencies, agriculture and cattle raising, mines and petroleum, public works, health, water and irrigation. Each one of these divisions is subdivided into sections, each of which is headed by a chief.

Under the division of development and dependencies we first find the section of industry, whose jurisdiction covers all matters pertaining to the extension or improvement of industry. One of its latest interests has been the Tomenotti colonization project now being developed under the name of the Peruvian Land and Development Company. Its purpose is to develop a large tract of fertile agricultural land in the interior. This section also takes care of the registration of patents and trade-marks. The next section, known as the section of immigration, propaganda, and exchange, has charge of all matters coming under these heads. In addition, it exercises supervision over the engineering school and the school of arts and crafts. The third section or section of labor is particularly concerned with all disputes between capital and labor. As an aid to the settlement of the problems of the working classes there has been organized by executive decree the superior council of labor and social interests. Factory inspection and the Red Cross Society come under this jurisdiction. The last section, known as the section of native affairs, was created by President Leguía by the decree of September 12, 1921, to protect the native in his work, property, and individual liberty. Its particular functions

are to investigate and study the Indian problem of the state, to see to the enforcement of all laws and decrees protecting the native races, and to suggest such improvements as seem feasible and advisable. As a specific aid to the problem, another executive decree dated May 11, 1923, required the municipal councils of the provinces to fix annually a minimum wage for the native laborers, under no conditions to be less than the minimum daily wage of 20 centavos fixed by the law of October 16, 1916.[11]

The division of agriculture and cattle-raising has under its jurisdiction the section of agricultural statistics and the technical institutions for instruction and experiment, such as the National School of Agricultural and Veterinary Science and the Central Station of Agronomy. The Zoological and Botanical Park of Lima is also directed by this division.

The division of mines and petroleum is divided into two sections, the first in control of the mining industry, the second of the petroleum industry. In addition, we find the superior council of mines and petroleum and a corps of mining engineers. Some idea of the remarkable growth of the mining industry in Peru can be gained from these figures showing the annual value of mining production by 5-year periods: 1905, £1,828,531; 1910, £3,373,212; 1915, £5,929,845; 1920, £8,208,827.[12]

The division of public works has a large variety of interests and services to take care of. The railway section looks after the planning and granting concessions of new railways and oversees the management of those in operation. The highway section has a similar task regarding the roads and highways of the state. The section on statistics prepares general statistics, takes the census, and obtains the information for fixing railway and tariff rates. The section on water is concerned with sewage disposal, sewer systems, and water supplies. The section on general work has to do with paving, building bridges, urbanizing suburban districts, and taking charge of national celebrations, such as the centenary of Ayacucho.

The division of water and irrigation is divided into administrative, technical, and hydroelectric sections. Its work is primarily concerned with bringing the mountain waters down to the valleys for irrigation purposes.

The division of public health has a section of hygiene, a section of demography, and an administrative section. The introduction of sanitary methods, the prevention of the illegal practice of medicine, the keeping of birth and death records and records of all diseases

[11] Merely as a means of comparison, in Lima at the present time (September 1924) a daily newspaper sells at 5 centavos, a bootblack receives 20 centavos for a shine, and a very ordinary meal would cost at least 200 centavos.

[12] *Statistical Abstract of Perú, 1920*, p. 75.

come under its jurisdiction. By the executive decree of August 31, 1922, a division in charge of matters pertaining to the protection of infancy has been created.

Like the cabinet members in the United States, the ministers exercise a dual function. They must perform the administrative duties pertaining to the management of their respective departments and they must also form a part of the council of ministers which meets with the presidents as a sort of general advisory and policy-determining body. According to the organic law of September 26, 1862, which established the council of ministers, its essential object is to unify and direct the administration of the affairs of state under the orders of the president of the republic and in accordance with the constitution and the laws.

The president of the council of ministers is designated by the president of the republic, and if by death or other cause the position becomes vacant, the president, after consultation with the ministers, must immediately appoint a successor. In case of illness of the president, however, the council may be presided over by the eldest minister. In actual practice, however, the president of the republic usually presides over all meetings of the council. In fact, the duties of the president of the council are merely nominal, and in no way is his position comparable in importance to the premiership in the cabinet system of government. His principal functions are to advise with the president in regard to those who are to be appointed ministers, to act as spokesman for his colleagues on the few special occasions when the ministry goes before the chambers, and in case of disagreement between the president of the republic and the council he acts as the organ of communication.

The president of the republic may summon a conference of the council of ministers whenever he sees fit, but normally the council meets once a week at a regular time.[13] At least 4 members, including the president of the council, are required to constitute a quorum. If any minister feels that a question of such importance has arisen as to warrant the summoning of the council, he may communicate his request to the president, who will forthwith call a meeting. A record is kept of the council's deliberations and decisions by a minister designated by the president, and these proceedings are signed by all the ministers. All questions are decided by a majority vote and in the case of a tie, the president of the council is given an extra vote to decide the matter.

The president of the republic may ask the advice of the council of ministers in regard to any question in which he deems it necessary. However, in such cases the council merely renders an advisory

[13] The present custom is to meet every Wednesday afternoon at 6 o'clock.

opinion and neither the president nor the minister in whose jurisdiction the matter lies need regard the opinion as binding. However, there are occasions when the vote of the council has more weight. By the terms of the law of February 19, 1863, the president will hear the consultative vote of the council upon these occasions: (1) when he makes use of the suspensive veto power in regard to any law; (2) when he seeks authorization to raise loans; (3), when he names ministers plenipotentiary, envoys extraordinary, or ministers resident; (4) when he nominates judges and attorneys of the supreme court, or appoints the commander-in-chief of the army, the admiral of the fleet, the prefects, the director-general of the treasury, president of the superior tribunal of accounts, or when he offers candidates for bishops and archbishops. Although on these occasions it is obligatory to consult the council, neither the president nor the minister of the department concerned need follow its opinion; nor in case of disagreement between the council and the president and minister need either the cabinet or minister resign.

Of still greater importance is the so-called deliberative vote of the council. According to law, the president is required to consult the council and obtain their approval on these occasions: (1) whenever he decrees a blockade or inaugurates a campaign after it has been authorized; (2), whenever he decrees the appropriation of private property for a public purpose; (3), whenever any transfer of credits in the budget is made either within the same departments or in different departments or whenever supplementary or extraordinary credits are required;[14] (4), before presenting the general budget of the republic to the congress; (5), when the nominations of the members of the council of state are made. If in any of these five instances the council refuses its approval and the president insists upon carrying out his policy, the cabinet must resign and a new cabinet be formed whose approval can be obtained.

A new function has been assigned to the council of ministers by the constitution of 1920. According to articles 116 and 117, whenever the office of the presidency is vacant either through the permanent or temporary disability of the president, the council of ministers must assume the reins of government until the presidency shall be filled. By the constitution of 1860 the vice-president assumed this function.

We have already noted the fact that every order or decree or resolution of the president must be signed by the minister under whose jurisdiction the matter comes. If a disagreement arises between the president and the minister, and the latter refuses to sign, the matter is brought before the council of ministers. If the council supports the president the minister may still continue to hold his post, but the

[14] For further limitations here see *Ley Organica de Presupuesto* of December 23, 1922, Arts. 17–20.

president designates another minister to authorize the act by his signature.

The constitution (art. 132) declares that the ministers are responsible collectively for all acts and resolutions which have been approved by the council of ministers, unless some minister can show specifically in the case of a particular resolution that he voted against it. In such a case the minister disapproving is not held responsible for the measure. In similar fashion the minister is held responsible individually for all the measures of his department. For any violation of the constitution or for the commission of any act in the exercise of his functions which the law forbids, he is subject to impeachment. Proceedings of impeachment may be brought either while he is in power or after his retirement from office. The procedure is the same as in the case of the president. For ordinary crimes or misdemeanors committed entirely independent of his public functions, the minister is subject to the ordinary judical processes just like any other individual.

The employment of impeachment proceedings in the case of ministers is by no means rare in Peruvian history. Mention has already been made of the accusation brought against ex-minister of Government Mavila in 1920, which ultimately was made to include the whole cabinet and Ex-President Pardo.[15] Another accusation against a whole ministry occurred in 1895, when the last cabinet of General Morales Bermúdez, under the presidency of José Mariano Jiménez, was accused of preventing First Vice-President D. Pedro A. del Solar from taking the office rendered vacant by the death of President Bermúdez, and of aiding Colonel Justiniano Borgoño in seizing the position. Both chambers in this case found there was ground for the accusation and the case went to the supreme court for decision. The court, however, did not regard the evidence as sufficient.[16] Another case occurred in 1894, when the chamber of deputies brought an accusation of maladministration of funds against Ex-Minister of Finance Ferreccio. The senate agreed that there were grounds for the accusation, but upon this occasion the supreme court was unable to take action because before the case came up for trial Señor Ferreccio had left the country.[17] A less recent example, but one which attracted considerable attention at the time, was the accusation made in 1872 by the chamber of deputies against the ex-ministers of President Balta, including Ex-Minister of Hacienda Nicolás de Piérola. The committee of the senate appointed to consider the case also reported that there was ground for the accusations, but the senate did not

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[15] See p. 41.

[16] For details see *Diario de los Debates de la Camara de Diputados 1895*, pp. 613–732; also *Diario de los Debates de la Camara de Senadores*, 1895, pp. 907–935.

[17] See *Diario de los Debates de la Camara de Diputados, 1894*, pp. 343–353; also *Diario de los Debates de la Camara de Senadores*, 1894, pp. 431–440, 467–477.

sustain its committee. As Piérola became president of the republic on two different occasions following these charges it would seem that little odium attaches to such charges unless they are sustained by the supreme court.

It should be noted, furthermore, that the responsibility of the minister is not limited solely to his vote in the council and to his acts in the administration of his department. He is also expected to oppose any act contrary to the constitution or the laws, whether it be committed by the president or by one of the other ministers. Upon such an occasion the law provides that the rest of the ministers shall collectively express their disapproval by an act stating their opinion.[18]

In all important matters it goes without saying that the minister may not act without consulting with and obtaining the approval of the president. However, in certain routine matters the signature of the minister alone is sufficient to make the act valid. For instance, the minister may issue an official note for the execution of any existing law or regulation pertaining to the affairs of his department. But if the matter is out of the ordinary, or if the president considers it of particular importance, the minister is then forced to bring the note to the president's attention for his approval and signature. Also, the minister may send notes to the treasury department ordering the payment of sums listed in the ordinary expenses of the budget; but if the expenditure be extraordinary, then a presidential decree must authorize it. For example, by decree the government may authorize the minister of instruction under his own signature to authorize extraordinary expenditures within certain specified limits.[19] The ministers have very little independent appointive power, although their advice would naturally have considerable weight with the president in regard to the subordinate officials of the departments. However, the directors of some of the divisions have very broad powers of appointment, as, for example, the director-general of instruction.

By the constitution of 1860 any senator or deputy accepting a minister's portfolio thereby forfeited his seat. However, the amendment of September 10, 1887, eliminated this restriction and the present constitution also allows the representative to retain his seat while acting as minister. However, since a minister may not be present in the congress while a vote is being taken, he *ipso facto* loses his vote as representative. Furthermore, the constitution (art. 131) says that the functions of a deputy or senator remain suspended while he is acting in the capacity of a minister. Therefore any appearance in the chambers must be in the capacity of a minister.

There are certain functions shared in common by all the ministers. Every minister must present to the congress at the opening of its

[18] Law of September 26, 1862, art. 47.
[19] *Ley Organica de Enseñanza* of June 30, 1920, art. 4.

ordinary sessions a report or *memoria* showing the exact conditions existing in the various divisions and sections of his department. In addition to these reports, most of the departments issue certain other official publications, as for example, the *Boletin de Relationes Exteriores*, the *Boletin de Fomento*, the *Registro de Fomento*, the *Boletin de Guerray Marina*, the *Memorial del Ejercito*, and the *Anuario de Legislacion Peruana*. These are based, however, for the most part upon executive decrees rather than upon laws. Every minister must present to the congress whenever it is required any information sought either by the chambers or by any representative. Each minister has the privilege of presenting bills at any time in regard to his department, but first he must secure the approval of the president. All the ministers may participate in the congressional debates, but they must withdraw while a vote is being taken. The ministerial salaries are identical, each receiving £1,680 annually.

Although the present constitution does not declare, as did the constitution of 1860, that the ministers must appear before the congress to answer interpellations, the matter would still seem to be covered by the provisions of the law of September 3, 1879. This law specifically states that the ministers must attend the sessions of congress to answer interpellations either by senators or deputies whenever they are called for this purpose either by congress or by one of the chambers. The questions are communicated in writing to the minister interpellated. Either the chamber fixes the day when the minister shall answer or invites the minister to fix it. A debate usually follows the interpellation, in which all the representatives interested participate. At the close of the debate the chamber usually passes a vote of confidence or of censure.

Until the constitution of 1920 came into effect the resignation of ministers following a vote of censure rested upon custom rather than upon law. Article 44 of the law of September 26, 1862, declares that the congress shall use the vote of censure to disapprove the conduct of a minister, but it does not state that the minister shall resign as a result of it. However, the custom of recent years has been for the censured minister to resign. In fact, as a recent writer has declared, "the situation of a minister when parliament is in session is hazardous and full of uncertainty. The cannibalism of the congress passes the limits of exagerration; its greatest pleasure is to devour a ministry."[20] The present constitution settles the matter very definitely by declaring that no minister shall continue in the exercise of his functions against whom either chamber has passed a vote of lack of confidence.

Although the ministers may appear in congress to discuss measures, in practice it is not their custom to participate in the debates of

[20] P. Dávalos y Lissón, *La Primera Centuria* (Lima, 1919), p. 63.

congress. They are much more likely to confer privately with the committees of the legislative body, or to participate in joint conferences with the president and the committees. Their principal functions after all are administrative, and with the ever-increasing tendency of governments to carry on their work in accordance with well-established business principles and methods, the administrative functions of a minister should ultimately become all important.

CHAPTER V.

THE LEGISLATIVE POWER.

It is a somewhat peculiar political phenomenon that the legislative bodies in countries that have a parliamentary system of government seem to be more popular with the voters than those where the presidential system is found. An Englishman will often say a good word for his parliament, and a Frenchman generally has considerable respect for both the chamber of deputies and the senate. But in the United States such words of commendation as the government receives are usually limited to the executive branch. When the legislative branch is mentioned, it is often in terms of ridicule, disparagement, or downright abuse. Whenever there is a conflict between the executive and legislative powers, public opinion is almost invariably on the side of the executive.

This habit of criticizing the legislative branch seems just as common in Peru as in the United States. The publicists seem to be nearly unanimous in their condemnation of the legislative branch of the government, and some of the most violent criticisms emanate from members of the parliamentary body. Doctor Mariano H. Cornejo, who has served many terms in the congress of Peru, has thus expressed himself:

> The congresses in Peru through the atavistic and progressively accumulating vices of their organization, because of the inferiority of the political medium in which they exercise their functions, because of the degeneration of the parties which they represent, because of the pettiness of local jealousies, because of individual selfishness and lack of control of their members, lack both authority and prestige, and fail to receive those currents of opinion which are the indispensable bases of great heroism and sacrifice.[1]

Doctor José M. Manzanilla, president of San Marcos University, who has also served for many terms in the legislative bodies, in a much quoted address on the legislative power in Peru declared that—

> Our chambers, confused by the obsession of partisanship, forget legislative matters, and in a society not yet definitely organized have the appearance of following the doctrine that that government is best which governs least, and that congress best which legislates not at all. If arbitrary administrative acts had not on occasions supplemented the indifference of the legislator, vital and urgent public necessities would have remained unsatisfied.[2]

Señor Pedro Dávalos y Lissón, in his study of the political and

[1] Quoted by P. Dávalos y Lissón, *La Primera Centuria* (Lima, 1919), p. 80.
[2] *Anales Universitarios*, vol. 31, p. 9.

economic problems of Peru, has attempted a dispassionate analysis of the legislative power in Peru:

> The congresses of Peru, except perhaps the one of 1886, have enjoyed very little prestige. Without the backing of public opinion, without strength either to accomplish radical reforms or to direct the country in the paths of progress, the legislative power regularly lacks initiative, and limits its labor to discussing projects of the government or those of a regional character . . . . With no method in the discussion, or discipline in the proceedings, the parliamentary machinery functions ponderously. Matters which should be settled in a few hours engulf the chambers in useless discussion for 3 or 4 days . . . . The rules lack any disposition to facilitate discussion or to preserve moderation in debate, or to make it possible that the laws should be the fruit of a majority of the congress. Antiquated as they are, they do not meet the needs of modern parliamentarianism, and serious questions of form arise daily, for the most part provoked by a minority in opposition . . . . Since in practice the congress has very little control over the acts of the executive, and since it is so often subject to the orders which its leaders receive from the *palacio*, and so regularly disposed to sanction whatever the ministers lay before it, no one feels for it in the days preceding its annual reunion the same enthusiasm and hope that the advent of a new figure as president of the republic awakens in the popular masses.[3]

Most of the Peruvian constitutions have provided that the legislative power should be vested in a congress of two houses, a senate and a chamber of deputies. The notable exceptions were the constitutions of 1823 and 1867, which established a unicameral system, and the constitution of 1826, which provided three chambers. Both the present constitution and the constitution of 1860 established a bicameral system, with both chambers popularly elected. The qualifications for electors in the congressional elections are the same as those in presidential elections, namely, all male Peruvian citizens 21 years of age or married who know how to read and write and are enrolled in the military register.

One of the most noticeable changes made by the constitution of 1920 was in regard to the composition of the congress. According to the constitution of 1860 the representation in the chamber of deputies was of a dual character. Every province had at least one deputy, but the population basis established was one deputy and one substitute for each 30,000 inhabitants or major fraction of this sum. At the time the new constitution came into effect there were 112 provinces, but as Lima elected 6 deputies, and 13 provinces elected 2 deputies each, there was a membership of 130 deputies in the chamber. The constitution of 1920 fixed an arbitrary figure for the chamber, 110 deputies. These were apportioned by the executive decree of July 17, 1919. The rule that each province must have a deputy was eliminated, and an attempt made to distribute representatives as far as possible in accordance with population. Lima now has

[3] *La Primera Centuria* (Lima, 1919), vol. 1, p. 77.

4 deputies, Arequipa 2, and most of the others 1 each. However, 12 of the smaller provinces are forced to content themselves with 1 representative for each 2 provinces.

A similar change was made in regard to the composition of the senate. The former constitution permitted 4 senators and 4 substitutes from each department containing more than 8 provinces, and taking this as a maximum, fixed the number of senators from the smaller departments in accordance with the number of provinces which they contained. The total membership of the senate in 1919 upon this basis was 57. The new constitution fixed the number of senators at 35, and the same executive decree of July 17, 1919, apportioned the senators. The 12 larger or more important departments each elect 2 senators and the remaining 11 each elect 1.

A slight change was also made in regard to the bases of eligibility to the congress. The property and educational qualifications for both houses were eliminated. The new basis for a deputy is Peruvian birth, active citizenship, 25 years of age, inscription in the military register, and either to be a native of the department to which the province belongs or to have resided there at least 2 years. This 2-year residence does not necessarily have to occur at the election period—any period of 2 years' residence satisfies the requirement. To become a senator requires Peruvian birth, active citizenship, and enrollment in the military register, but the age limit is 35 and the residence qualification is entirely eliminated.

There are a large number of positions the holders of which are specifically eliminated from being elected as either senator or deputy. The president of the republic, ministers of state, prefects, subprefects, and governors are eligible only providing they have resigned their position at least 2 months before election. The following are ineligible under any circumstances: judges and attorneys of the supreme court and the superior courts, judges of the first instance and fiscal agents; all public employees who can be removed directly by the executive power, and all officers and soldiers in the army who are in service at the election period; all ecclesiastics, including archbishops, bishops, ecclesiastical governors, capitulary vicars, and provincial curates. In fact, article 77 of the new constitution goes on to say that there is incompatibility between the legislative mandate and all public employment, whether it be in national or local administration. All employees of the public charities or any other organizations dependent in any way upon the state are included in this ineligibility.

The constitution also requires senators and deputies to resign their seats if they accept any position, charge, or benefit at the hands of the executive. However, there are certain specific exceptions. Ministers of state, as we have already seen, may retain their seats while holding a portfolio. Both senators and delegates may be

appointed as members of international commissions with the approval of their respective chamber, but with the understanding that no absence shall last longer than one ordinary session. Members may also accept nonremunerative positions at the hands of the executive. For example, Senator Alberto Salomón was appointed by President Leguía as president of the Third Pan-American Scientific Congress, which met in Lima in December 1924.

According to the new constitution, both senators and deputies are elected for 5-year terms and both are eligible for reelection. A rather peculiar limitation is that only in case of reelection may either a senator or deputy resign. Under the provisions of the constitution of 1860, both chambers were renewed by thirds every 2 years, but the present constitution radically changes this by providing that "the renewal of the legislative power shall be total and must necessarily coincide with the renewal of the executive power." (Art. 70.) This reform was one of those most zealously championed by Señor Cornejo in the national assembly. The call for the congressional elections is supposed to issue from the executive office, but if the president fails in his duty the congress may issue the call. In case of vacancies in either house, by-elections may be held, and the rule for calling these is the same as for general elections. The candidate elected will merely fill out the unexpired term.

There have been periods in Peruvian history when biennial sessions of the congress were considered ample, but since the constitutional law of January 3, 1879, the sessions have been annual. The constitution of 1920 provides that ordinary sessions of the congress shall be held every year, commencing on June 28 and lasting at least 90 days. Under no circumstances may the sessions last more than 120 days, although the congress is compelled to remain in session the maximum period if the budget is not passed sooner. We have already noted the fact that the President may call extraordinary sessions of the congress at any time that he deems it wise or necessary, and that very often he is practically compelled to do so in order to get the budget approved. In recent years it is very rare that at least one special session is not called. In these sessions the procedure and scope of legislation is just the same as in ordinary sessions. Although the president usually lays down a special program to be legislated upon, and the new constitution provides that it be given preference, both law and custom sanction the consideration of any new business whatsoever.

Each chamber elects its own presiding officer or president, and two vice-presidents annually in the preliminary sessions which always precede the opening of the ordinary congress. The president is elected by a majority vote and may be reelected for a single time by a two-thirds vote. The term of office lasts throughout the year, so that

the president elected presides over both ordinary and extraordinary sessions. The joint sessions of the chambers which are known as the congress is presided over alternately by the presidents of the chambers. However, during the session of installation on July 28 (October 12, in 1924), the president of the senate presides. The vice-presidents may substitute for the president in his absence.

The functions of the presidents of the chambers are determined by the chambers themselves and are found in the *Reglamento Interior de las Cámaras*. They are for the most part very similar to the duties of any presiding officer of a legislative body. However, the presiding officer in the Peruvian legislative bodies is more like those in the English and French parliaments than like the speaker in the American house of representatives. His position is rather of a non-partisan moderator than that of a political leader. The following list of functions assigned to him in the *Reglamento* will give an idea of his position: He is expected to open and close the sessions at the hours prescribed; he must see to it that order is maintained and that silence and a fitting decorum is observed; if a senator or deputy is called to order three times and persists in disobedience to the regulations, the president may ask him to leave the room for the session, and such a request must be obeyed without contradiction; as presiding officer he recognizes those representatives that wish the floor in the order that they have sought it, and calls to order those orators who stray from the question; he sees to it that in both discussion and voting the parliamentary rules are observed; he announces at the end of each session the business which is to be taken up in the next session; he brings up questions in both ordinary and extraordinary sessions which had not been agreed upon in advance; he names with the approval of the chambers the personnel of the committees and he serves as chairman of the police committee of the chamber; finally, it is he who must sign all the acts and official documents of the chamber. He has no vote except in the case of a tie.

In each chamber two secretaries and one assistant secretary are elected from the members, whose terms, like that of the president, last from one ordinary legislative session to the next. It is the duty of the secretaries to draw up and sign all the acts, laws, and other papers that the presidents sign. The secretaries receive the bills proposed by the deputies and senators, the reports from the commissions, communications from the executive, and all projects, memorials, and representations which are directed to their respective chambers, examine them with the presidents, and start them off on their proper course. At the conclusion of the day's session they are expected to write up concisely but clearly the minutes of the proceedings. These are read and approved at the beginning of the following session. The minutes are placed in the archives and the copies signed by the

secretaries form what is known as the "*libros de actas.*" Each chamber also has a treasurer, elected annually from its membership. This group of officials of each chamber, comprising the president, the vice-presidents, the secretaries, and the treasurer, is generally known as the "*mesa directiva*" or bureau of the chamber.

Like all modern legislative bodies, both the senate and chamber of deputies do a great deal of the actual work of preparing legislation in committees. The present constitution has two articles which touch upon committees. Article 99 says that the chambers may name parliamentary commissions of investigation and information, while article 100 says that each chamber shall elect every year one or more committees nominated by the president in order that during the recess of the chambers they may report upon unfinished business. The *Reglamento* declares that it is the object of the committees to facilitate in every way possible the progress and despatch of business; to examine questions, get information upon them, and be ready to furnish it when required, and to put the material in the form of resolutions (Chap. VIII, art. 1).

All committees are appointed by the president of the chamber concerned and with its approval. There are two kinds of committees, permanent and ordinary, and temporary and extraordinary. The permanent and ordinary committees are elected every year at the beginning of the ordinary legislative session, and they remain established throughout the legislative session. To each one is assigned some particular subject, and the members are expected to become familiar with all matters pertaining to that subject. There are committees on the budget, on foreign relations, on war, on the navy, on agriculture, on public works, and on various other questions. There are usually about 25 permanent committees in the senate and about 40 in the chamber of deputies. The permanent and ordinary committees of the chamber of deputies regularly consist of 5 members while those of the senate have 3. The temporary and extraordinary committees of both houses are named only upon special occasions. They are usually appointed to make an investigation of some sort, or to present a special report, or to prepare the plans of some project which has been determined upon. Once a special or temporary committee has accomplished its task it immediately ceases to exist. No senator or deputy may belong to more than two committees.

Both senators and representatives are guaranteed inviolability and immunity by the constitution in the performance of their functions. Article 80 seems to cover the subject in a comprehensive and succinct fashion:

> Senators and deputies are inviolable in the exercise of their functions, and can neither be accused nor imprisoned without the previous consent of the chamber to which they belong for a period of time lasting from one month before the sessions are opened until one month after they have

closed; except when taken *flagrante delicto*, in which case they shall be placed immediately at the disposition of their respective chamber.

In civil matters, however, they enjoy no immunity and are subject to the jurisdiction of the courts just as any other citizens.

In case a senator or deputy commits any act contrary to the constitution or the laws in the exercise of his functions, he is subject to impeachment. The procedure here is exactly the same as employed in the case of the president and the ministers; the chamber of deputies makes the accusation, the senate determines whether it is valid, and the supreme court hands down a decision in case the senate decides that the action is sustained.[4]

Each senator and deputy individually possesses certain rights or attributions. Perhaps the most important is the right of each representative to initiate legislation—a right granted by the constitution. The constitution also gives every senator and deputy the right to ask for any necessary information from the ministers of state. Any representative with the consent of his chamber may interpellate the ministers, and he also has the right to introduce motions of censure or of confidence. A representative may furthermore make recommendations or suggestions to a minister regarding the carrying out of some administrative policy. Finally, every representative has the right to make the ordinary routine motions, such as to postpone, to pass to the order of the day, to adjourn, etc.

The constitution says nothing in regard to the remuneration of the members of the congress, but various laws have covered the subject, the three last being those of October 26, 1891, of February 1, 1906, and of December 9, 1918. The law of December 9, 1918, which was passed over the president's veto, granted to both senators and deputies a salary of £p50 monthly. It further provided that the sum of £p5 should be deducted from a representative's allowance for each session from which he is absent without excuse. However, each chamber may grant a leave of absence to any member for sickness or other valid reason, providing such grants of leave shall not reach a seventh of the total membership of each chamber. In April 1920, by a special agreement between the two houses, an additional sum of £p360 yearly for expenses of representation and installation was made available to each senator and deputy. Therefore the present salary of a representative amounts to £p80 monthly.[5] A transportation allowance of 60 centavos per league is also granted.

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[4] An interesting case arose in 1920 during the course of a debate in the chamber of deputies, when the minister of government, Germán Leguía y Martínez, publicly accused Deputy Aníbal Maurtua of having accepted extra remuneration at the hands of the executive, and demanded his expulsion. No committee, however, was appointed. the chamber merely taking a vote on a motion that the seat had not been lost. *Diario de los Debates Cámara de Deputados*, 1920, pp. 155–205.

[5] There is no record of this increase in any published records, as the agreement was made in secret session. It might be noted that the legislative appropriation in the budget is given only in a lump sum, thus permitting the chambers to distribute it as they see fit.

As regards the powers or attributes of the congress, the constitution of 1920 is both specific and comprehensive. Article 83 lists some 25 different functions which the congress is expected to perform. The great majority of these functions relate essentially to the field of legislation, but some, such as those pertaining to the control of the executive, are purely political, while others, such as the choosing of judges of the supreme court and granting of amnesties, might be classed as administrative.

The legislative power, however, is given first place, and section 1 of article 83 says that the congress has the power to pass laws and to interpret, modify, and repeal existing laws. This grant of power includes constitutional as well as statute law. As we have already noted, the difference between constitutional and statute law is not in the source but in the method employed in passing it. According to the provisions of the present constitution, it may be amended, providing that the change be made in an ordinary legislative session and then be approved by a succeeding ordinary legislature. But in both cases the amendment must receive a two-thirds vote in each chamber. In addition to constitutional and ordinary law, the congress passes a large number of legislative resolutions, usually of a specific rather than of a general character. Amnesty to a criminal is conferred by legislative resolution, and an explanation of the significance of some clause in the constitution or in some law is sometimes made in this way, but the great majority of legislative resolutions are in recognition of individual services which grant a right to a pension or annuity. The legislative resolutions take the form of communications to the president of the republic and are signed by the presidents and a secretary of each chamber.

The legislative jurisdiction of the congress is practically unrestricted. The only limitations would seem to be those laid down in the constitution. For example, special laws which benefit some persons at the expense of others are prohibited, as are also laws which suspend individual guaranties. The constitution specifically prescribes certain fields of activity concerning which the congress is expected to legislate. The law must determine the type and the denomination of money; only the law may impose and suppress taxes or establish tariff duties. But the fact that certain subjects are thus singled out for legislative action by no means prevents the congress from legislating regarding other subjects which are not mentioned. Like most legislative bodies of the present time, the Peruvian congress makes little effort to restrict the amount of legislation produced, although in this respect it is not as given to wholesale production as the congress of the United States. According to the figures of the *Anuario de la Legislación Peruana*, from January 1, 1910, up to January 1, 1920, laws and legislative

resolutions to the number of 2,795 were passed. Of these, by far the larger part were legislative resolutions.

Coming to what might be termed the political functions of the congress, we find they are largely concerned with checking the powers of the executive. Perhaps the best example of this type of activity is found in the interpellation of the ministers and the vote of censure or confidence which usually follows it. Also, the congress is given the responsibility by the constitution to safeguard all constitutional and legal rights, and to accomplish this it may declare null and void any regulation, decree, or other act of the government which is contrary to the constitution or the laws. Perhaps we should also include the power of impeachment in this category.

But of far greater scope and variety are what might be called the administrative functions of the congress. Some of these pertain primarily to the field of foreign affairs, as, for example, approving or disapproving international treaties or declarations of war, permitting the entrance of foreign troops on Peruvian soil, allowing the president to command in person the military forces, authorizing the president to leave the national territory, and determining the size of the land and sea forces that the state should maintain. Others are purely questions of internal administration, such as electing the judges and attorneys of the supreme court and the archbishop and bishops; proclaiming the election of the president and electing him when the constitution requires it, permitting the resignation of the president or determining upon his physical or moral incapacity; approving or disapproving the general financial report of the republic; and granting amnesties, pardons, and awards. Under this head we should also place the power of the senate to approve or disapprove of the nominations to the diplomatic corps and the members of the council of state if it should ever be formed.

Finally, there are certain miscellaneous functions which the congress is authorized to perform, such as to designate the place of its sessions and to determine whether or not there should be armed forces present and in what numbers and at what distance. When the president fails to issue a call for the general elections or special elections, the congress may do it. Congress may also prolong the 90-day period of the ordinary session to 120 days if it deems it necessary. Each chamber has the right to organize its secretariat, name its employees, form its budget, and regulate its internal order and affairs. If the president vetoes any resolutions passed by the regional congresses, the national congress has the right to approve or disapprove of them in exactly the same manner as with any other vetoed legislation.

When we come to the organization of the chambers and legislative procedure, we find a number of striking differences from the congress of the United States. The constitution provides that the ordinary

sessions of the congress shall begin on July 28 every year, but it also provides that whenever there is a renewal of congress, each chamber shall meet in preliminary sessions a month earlier to act as a sort of committee on credentials. The new law of elections of January 28, 1924, regulates the procedure. All the representatives appear in the capital at the time set and present their credentials to the secretariat.[6] Preliminary meetings of both chambers are advertised in the papers and all representatives whose credentials conform to those received by the secretariat are declared elected at these preliminary sessions. Committees on credentials are formed to consider all doubtful or contested cases. These committees report daily to their respective chambers, and objections may be made on the floor either by representatives or claimants. The chambers hear the arguments and vote on each individual case, all representatives elected voting except those interested. (Art. 34.)

After at least 60 per cent of the total membership of each chamber has been seated, the chambers may proceed to the election of their bureaus (art. 35), and then in accordance with article 88 of the constitution proceed to the consideration of the presidential vote. A committee of 2 senators and 3 deputies is elected by absolute majority, and this committee thereupon proceeds to open and check the presidential vote as transmitted by the provincial election inspectors. This committee must make its report not later than the day before the installation of congress. Both chambers united consider this report in a sort of preparatory committee of the whole, and they remain in permanent and continuous session until they are able to proclaim the election of the president.

According to article 5 of the *Reglamento Interior de las Cámaras*, the two chambers must also elect their officers on the day preceding their installation.

On July 27, with at least two-thirds of the total membership of each chamber present, will be held the last session when by absolute majority there shall be elected by each chamber a president, a first and second vice-president, two secretaries, and an assistant secretary.

The oath of office is also taken by the representatives on this day.

On the first day of each regular and extraordinary session a joint session is held in the regular session chamber of the chamber of deputies. The president of the senate presides, and if it be the opening of a regular session, he names a committee of 3 senators and 5 deputies who are to announce to the president of the republic that the congress is in session. Another committee of 3 senators and 5 deputies receives the president at his arrival and escorts him to the door at his retirement. The president of the republic takes the seat under the canopy at the left of the president of the congress. If it be a presidential year

[6] The credentials are in triplicate, one copy going to the representative, one to the secretariat of either chamber, and one to the ministry of government. (Article 22, law of 1924.)

it is at this session that the president takes the oath of office and receives the presidential insignia. On such occasions it is he who inaugurates the session of congress and then delivers his presidential message. In other years the president's function is confined to the delivery of his message.

At the joint session of the congress for installation, it is required that there be present 60 per cent of the membership of each chamber. To open all other sessions it is sufficient to have present a third of the members of each chamber. The joint sessions of the congress, as well as the individual sessions of each chamber, are public, although the constitution permits the regulations to provide for secret sessions. The *Reglamento* declares that the president and secretaries of each chamber may determine as to what matters shall be considered in secret session. It is also customary for the chambers to entertain a motion to go into secret session from any representative or from a minister who is participating in the debate if the matter warrants it. The constitution provides, however, that under no circumstances may secret sessions be held for the consideration of financial matters.

According to the *Reglamento*, each chamber formerly opened its session at 2 o'clock in the afternoon and closed it at 6, but custom gradually postponed the opening hour. The matter was finally settled by the law of March 14, 1921, which declared that the ordinary sessions of the chambers should open at 5 o'clock in the afternoon and should not close before 9 o'clock at night, so long as there was business in the order of the day. Each session was divided into two periods, the first lasting from 5 till 6, and the second from 6 till the close.

The order of business was also established by the same law. At the beginning of the first period the minutes of the previous session are read and approved and then signed by the president and secretary. Consideration is then given to all communications from the executive or the judiciary, to any communications from the other chamber, to any new proposals on the part of the representatives, to all written or verbal petitions, and to all other business, documents, or memorials on file and in the order received. The first period must be closed promptly at 6 o'clock, no matter what the nature or importance of the affairs under consideration. All business not completed will carry over to the following day, there being observed in all matters a rigorous order of presentation and despatch.

The second period is devoted exclusively to debate on bills and reports which are presented in the order of the day. Both bills and reports must be considered in the chronologcal order of their presentation. In order to secure precedence, a proposal to this effect must be made to the chamber and approved by a two-thirds vote of those present at the debate, with the ayes and noes recorded. When such

precedence is granted it is understood to supersede any preference previously granted, unless definitely specified to the contrary.

All projects for laws must be presented by their author in writing and in the form in which they are to pass. All bills which have several sections are discussed and voted upon by sections. No representative may have the floor a second time to discuss a bill, except to clarify the facts or to remove misunderstandings. The author of the bill, however, may be permitted to speak a second time to answer objections when no one else demands the floor. If a simple point of order is raised, the chair may settle it with the consent of the chamber; but if the matter is important, the president may place it in discussion, reserving the right to ask the chamber at any moment to close the discussion and put the matter to a vote. In case the debate over a bill is prolonged for more than five sessions a form of closure is available. Any 5 representatives may sign a petition asking the chair to put the question as to whether the bill has been sufficiently discussed. The president must then read the petition and immediately ask the opinion of the chamber. If the chamber votes to continue discussion a new petition to close it must have 10 names, and if that fails the next must have 20 and thus successively.

The *Reglamento* provides two forms of voting, the "ordinary" and the "nominal." The first is the more commonly used, and such questions as to whether a bill is admitted to discussion, or whether the discussion has been sufficiently prolonged, or even the vote on the bill itself may employ the "ordinary" form. According to the regulations, the method for taking this is as follows: the president has the motion or bill to be voted on read and then asks those who favor adoption to stand; the secretary counts and notes the number; the president then asks those opposing to rise, and their number is noted by the secretary; each side is expected to remain standing till the secretary announces the count. Although not mentioned in the rules, the vote on most routine questions is taken in a more simple fashion. The president calls for those in favor and the representatives strike the desk with their hands or slam their desk-lids—the same for the noes—and if it is very evident which side has it no attempt is made to count those for or against. The "nominal" voting or vote by roll call is used whenever the chambers deem the matter of sufficient importance. The constitution itself declares that the "nominal" vote shall be employed in all questions concerning the national income. In this method the roll is called by the secretary and each representative must answer yes or no. The secretary inscribes the vote in his register and then reads back the vote to be sure that it is accurate. A vote by black and white ballots is sometimes used for matters of particular importance, the black denoting a negative vote and the white an affirmative.

In order that a measure be approved, a majority vote of the members present may not always be sufficient. It is necessary that the votes favoring it equal one more than one-half of two-thirds of the total membership of each chamber, whether or not two-thirds be present. In case the required number of votes are not cast, the question may not come up for vote again till the following meeting. If it fails again to produce the required number it must be postponed again to the next meeting. If it fails the third time it may not be voted on again until there are present two-thirds or more of the total membership of the house. During the vote no one may either enter or leave, and those who have not been present during the discussion are not permitted to vote. Those who are present during the vote may not be excused from voting on any pretext. Any representative who leaves the room at the moment of voting or who abstains from voting will be admonished by the president. On the other hand, the rules do not permit a representative to vote on any question in which he is personally interested.

Contrary to British and American precedent, both the senate and chamber of deputies are in an exact equality in regard to the initiation of legislation. Money bills have just as much right to originate in the senate as in the chamber. Once a bill passes in either house it is immediately dispatched to the other, where the procedure is identical. But if the second chamber disapproves or modifies the bill passed by the other house it must be returned to its house of origin. If that house desires to insist upon retaining its bill in the original form it must repass it by a two-thirds vote of its total membership. Thus repassed it returns to the other body. If the other chamber by a two-thirds vote insists upon its amendment, the bill fails, but if a two-thirds vote in support of these changes can not be secured the bill as approved by its house of origin goes to the president. In the same way, if a bill is returned in a modified form to its house of origin, and the house of origin fails to register a two-thirds vote to sustain its original proposition, the bill then is regarded as passed in the form accepted by the revisory body. Bills approved by both chambers are put in final form by a joint committee of two deputies and one senator. In its edited form the bill must be again submitted to the chambers within three days for final approval.

Once a law is passed by both houses it is immediately sent to the executive for promulgation. If, however, he disapproves of the bill or desires its modification in any way, he must send it back to the congress within 10 days with his observations to that effect. The bill together with the observations of the president is now reconsidered in both houses. If in spite of the objections of the president the law is repassed in both houses by a vote sufficient for its original passage, the bill becomes law and must be executed. If, however, it fails of

approval at this time, it may not be brought up again until the following legislature. If the president fails to return the bill with his observations upon it within 10 days it becomes law, and if the executive fails to promulgate it this task devolves upon the president of the congress. A bill passed over the president's veto becomes law without promulgation.

The promulgation of a law is merely a public proclamation that a law has been passed and that it must be printed, published, circulated, and enforced. The president promulgates a law by means of an executive decree, using the following formula, which is prescribed by the constitution:

> The president of the republic. Inasmuch as the congress has given the following law [text of the law]. For this reason I order it printed, published, circulated, and duly enforced. [Date of the decree and signatures of the president and the minister in whose jurisdiction the question falls.]

When it falls to the president of the congress to promulgate a law he does it by a vive voce proclamation. The laws once promulgated are published in *El Peruano*, the government's official daily newspaper, unless they are very long. In this case they are published in pamphlet form. For example, the text of the organic law on instruction passed in 1920, which covers 180 pages, can not be found either in *El Peruano* or in the *Anuario de la Legislación Peruano*. However, the *Anuario* contains either the text or title of all the laws and legislative resolutions passed by the Peruvian congress.

There are certain functions which the chambers may perform only in joint sessions. These occasions are known as the sessions of the congress. The inaugural session of the chambers is always a joint session, and the proclamation of the election of the president is made in joint session. Joint sessions are also called to approve treaties and to elect the archbishop, bishops, and judges and attorneys of the supreme court. The presidents of the two chambers alternate in presiding over sessions of the congress, but the president of the senate always presides over the inaugural session. The joint sessions are always held in the chamber of deputies, and senators and deputies take their seats indiscriminately.

Although the senate has the same length of term and practically the same powers as the chamber of deputies, on the whole it has the greater prestige. Undoubtedly this is primarily due to the fact that it is the smaller body, its members older and more experienced, and that they represent a larger constituency. Under the constitution of 1860 the senate's only exclusive function was to settle questions of jurisdiction between the supreme court and the executive, but the present constitution also gives it the right to approve the nominations of diplomatic agents and the members of the council of state.

The senate chamber is a very unpretentious building, but of great

historic interest. The famous Spanish Inquisition held its court in this building from 1570 until it was abolished in 1813. In fact, this tribunal held its sessions in the same room where the senate now meets. The room is not very large, but beautifully proportioned, and the magnificiently carved ceiling is a gem of the colonial period. The president, vice-presidents, and secretaries sit upon a platform at one end and a small space for the public is found at the other. The senators sit at desks in double rows facing each other across an aisle running down the center of the room. The sessions are characterized by a spirit of decorum and courtesy not always found in legislative bodies.

The chamber of deputies holds its meetings in a large, imposing structure which is not yet entirely finished, across the square from the senate. The session chamber is circular in form and large enough to accomodate sessions of the congress. It has a beautiful ceiling of stained glass, and its acoustics are admirable. The deputies are arranged in a sort of semi-circle about the president's platform. Visitors are allowed in the galleries and there is almost always a goodly attendance.

Both chambers are largely made up of the professional and leisure classes of Peru. Business men are rarely found and artisans and farmers almost never. As might be expected, lawyers or men trained for the law largely predominate, particularly in the chamber of deputies. The composition of the senate in 1921 was as follows: 9 lawyers, 5 physicians, 5 soldiers, 1 professor, and 11 unclassified. The chamber for the same year had 35 lawyers, 11 physicians, 7 engineers, 6 soldiers, 3 diplomats, 3 business men, 1 surveyor, 1 naval officer, 1 journalist, and 27 unclassified. It would be difficult to find in any legislative body a higher percentage of educated men or men trained to grapple with political problems. That the legislature does not play a more important part is due neither to lack of ability nor to constitutional restrictions. It is rather because custom, precedent, and habit of thought all favor the executive branch, and because the party system as it works out in Peru practically places the whole control of the machinery of government in the hands of the president. But the legislative branch in Peru, particularly under the present constitution, has great potentialities; it has a strong hold of its own domain and is always in a position to check the executive if his program runs counter to public opinion.

CHAPTER VI.

THE JUDICIARY AND THE CODES.

Montesquieu in his *L'Esprit des Lois*, gave particular emphasis to the problem of political liberty, and attempted to formulate a type of governmental organization which would achieve it. He felt that power always tended to be abused, and therefore constitutional checks must be found. Having participated personally in a conflict between the judiciary and the king in France, he sought elsewhere for a political system which might be adapted to his purposes. He thought he had found such a type in the English system, and proceeded to make his famous classification of the powers of government. The three powers, executive, legislative, and judicial, he argued, must each be checked by a different organ, and only so far as this obtains can a constitution be regarded as insuring political liberty. The theory of the separation of the powers, perhaps, had greater influence in the New World than in the Old, and was adopted as a sort of a corner-stone of safety by all the American states in their constitutional structures. The constitution of Peru, like that of Brazil, goes one step further than the constitution of the United States, in that not only is the separation made, but it is especially provided that there shall be no overstepping of the boundaries prescribed.

However excellent the idea of separation may be in theory, it is practically impossible to make it work out in practice. In the English parliamentary system of to-day the idea is entirely abandoned. In the United States we have the president controlling the legislative power by his veto and his messages, and the legislative power interfering with the president's appointive and treaty-making power. The president appoints the judges, and the congress prescribes their number and fixes their salaries. Finally, the courts have assumed the right of declaring the laws of congress which violate the constitution as null and void. However, as a legal doctrine the theory still holds and is applied by the courts, and they have been very careful not to assume any power which is not clearly judicial in nature, nor have they permitted the delegation of legislative powers to executive officers. In fact, Professor Burgess has declared that the feature, par excellence, of the American governmental system is the constitutional, independent, unpolitical judiciary, and the supremacy of the judiciary over other departments, in all cases where private rights are concerned.

It has already been shown that in the Peruvian government, just as in the government of the United States, the executive and legis-

lative powers tend to encroach upon each other's territory. But we have also seen that in the case of Peru the presidents have come forth from the struggle with their powers and jurisdiction considerably increased at the expense of parliamentary bodies. The same struggle has taken place in Peru between the executive and the courts, and although the courts have fared somewhat better than the parliamentary bodies, the victory here also rests with the executive. The supreme court alone seems to have resisted successfully the influence of the executive, and stands to-day as a citadel of pure justice, completely free from political entanglements and influences.

The constitution of 1920 is somewhat more specific in its provisions regarding the judicial power than the constitution of 1860, but even under the present constitution the organization is left largely to law. The constitution practically limits itself to prescribing what courts shall exist and how the judges shall be chosen. Article 146 declares that there shall be a supreme court in the capital of the republic, superior courts in the capitals of the departments, and judges of the first instance in the provinces, as congress shall determine, and justices of the peace in all the townships. It then goes on to say that the law shall determine the organization of the judicial power and the form, conditions, and qualifications of appointment. The organic law of the judicial power is the law of December 15, 1911.

The supreme court consists of 11 judges and 3 solicitors-general elected by the congress from a list of 10 names for each position, proposed by the government. They are elected for life terms. The qualifications of the candidate are as follows: Peruvian by birth and active citizenship; at least 40 years of age; he must have served at least 5 years as judge or attorney of some superior court or have practiced law for 20 years. Under these restrictions the question has been raised as to whether a judge of the first instance whose combined practice of law and service as judge covered 20 years might be ineligible for nomination. Apparently the government thinks not, for such nomination was made recently. In his *Memoria* for 1922 the president of the supreme court urged that a law be passed clarifying this doubtful point.

To carry out the ordinary function of deciding cases, the supreme court is divided into panels of 5 judges each, the eldest judge of each panel presiding. The panels are organized at the beginning of each judicial year, and their respective jurisdiction is laid down in the organic law. (Art. 59.) Upon certain occasions, as, for example, the opening session of the judicial year, for the election of officers, and for preparing drafts of laws upon judicial matters for presentation to the congress, the court meets in full session. Upon such occasions the law requires that at least two-thirds of the total membership be present.

The jurisdiction of the supreme court extends over the entire territory of the republic. It acts both as an apellate court and as a court of original jurisdiction. In cases of appeal it has jurisdiction over both civil and criminal matters. In criminal cases its apellate jurisdiction may be found in the *Codigo de Procedimientos en Materia Criminal* (arts. 275–287), in civil cases in the *Codigo de Procedimientos Civiles* (arts. 1122–1144). The supreme court in Peru has somewhat greater scope in the character of its decisions than either the supreme court of the United States or the *cour de cassation* of France. In criminal cases it may, for example, annul the whole process, ordering new proceedings, or it may annul only the sentence and require a new hearing. Under the latter circumstances the supreme court decides whether the same tribunal should have jurisdiction. In certain classes of criminal cases the supreme court may modify the punishment or even declare the one convicted innocent; in another class it may only declare the sentence void and grant a new hearing. In cases of appeal no new evidence may be introduced.[1]

Whenever questions of jurisdiction between judges of different judicial districts arise over the same case, the supreme court is called upon to decide where the process shall be held. The supreme court also decides questions of jurisdiction between the civil and military authorities. Finally, in accordance with article 150 of the constitution, it devolves upon the supreme court to settle questions of competence which may arise between the executive power and the provincial councils in the exercise of their autonomous functions.

According to article 55 of the organic law on the judiciary, the supreme court may take original jurisdiction over two classes of cases: (1) cases brought against the president of the republic, ministers of state, the representatives to congress, the magistrates of the same court, the archbishop, the bishops, the diplomatic agents of Peru accredited to other nations, judges and attorneys of the superior courts, and members of the council of general officers, for the violations of law committed in the exercise of their functions; (2) actions of civil responsibility brought against the judges and attorneys of the superior courts and members of the council of general officers. (The council of general officers is a military tribunal whose functions are limited to military affairs.)

In addition to its essentially judicial functions, the supreme court exercises other functions, some of which are administrative in character and others legislative. As the head of the judicial power in the republic the constitution gives the supreme court authority to exercise control over all the other tribunals and judges of the state, as well as judicial officers, notaries public, registers of deeds and properties, both in a

[1] For a criticism of the bases upon which authority of the supreme court rests, see Camino, *Programa de Derecho Procesal* (Lima, 1919), pp. 55–57.

judicial and disciplinary manner, possessing full power to correct, suspend, and remove, according to law, justices, judges, or any other judicial functionary. The organic law (art. 56, sec. 6) authorizes the supreme court to remove or suspend for 6 months, according to its judgment, all judges and attorneys of the superior courts and judges of the first instance for various causes, such as habitual neglect, prolonged absence, drunkenness, prodigality, immorality, etc. The supreme court is also charged with seeing to it that justice is promptly administered, and to make this responsibility effective it has the power to fine or remove all judicial functionaries. The supreme court not only elects its own president and its subordinate and substitute functionaries, but it proposes a list of eligibles to the executive from which he appoints the judges and attorneys of the superior courts. This list must contain 6 names for each position to be filled.

We have already noticed the fact that the supreme court has the power to initiate legislation in judicial matters. It may also call the attention of the congress to any defects in existing legislation. It is also expected to furnish information both to the chambers and to the executive regarding any matters within its jurisdiction.

The judges of the supreme court are subject to impeachment proceedings for violations of the law in the performance of their duties, just as the ministers and the representatives. The procedure is exactly the same, and if the senate accepts the charges made by the deputies and the case is brought before the supreme court, we should have the case of a judge tried by his colleagues. Diligent inquiry, however, into the subject has failed to bring to light a single case of this sort. A judge is forced to leave the bench if he is convicted of any major offense. Habitual illness or any important physical defect, such as blindness or deafness, necessitates retirement, and under no circumstances may a judge serve after he has reached the age of 75 years. The constitution does not permit members of the judiciary to accept any political position at the hands of the executive, but it makes an exception for the justices of the supreme court by permitting them to become ministers of state.

Directly below the supreme court in Peru, we find the 12 superior courts. By the organic law of 1912, 10 of these were established in the following departments: Lima, Piura, Loreto, La Libertad, Ancachs, Cajamarca, Arequipa, Cuzco, Puno, and Ayacucho. By the law of March 30, 1920, two more were added in the departments of Lambayeque and Junín. The superior court of Lima is composed of 13 judges and 3 attorneys, those of Arequipa and Cuzco of 7 judges and 1 attorney and all the rest of 5 judges and 1 attorney.

The superior court of Lima is divided into four chambers; two of these chambers, consisting of three judges each, alternate monthly in hearing new civil cases; the other two, consisting of three judges each,

hear criminal cases. The courts of Arequipa and Cuzco are divided into two chambers, with three judges in each, which alternate monthly in hearing civil and criminal cases. The rest of the superior courts function in a single chamber of three judges which hears all cases. These single-chamber courts are renewed every month in such a way that all the judges except the president take turns in serving. The presidents of the courts are expected to serve in any of the chambers in the absence of a member. Like the supreme court on certain occasions, all the superior courts function with all their members in a single chamber. For example, there is a full session of the superior courts at the opening of the judicial year whenever they elect their officers and when they fulfill certain administrative functions prescribed by the organic law.

The judges and prosecuting attorneys of the superior courts are appointed by the executive from a double list of three names each submitted by the supreme court. The following qualifications must be met by a candidate to be eligible for appointment to a superior court: he must be Peruvian by birth and active citizenship; be at least 35 years of age; have been a judge of the first instance or a district attorney for 4 years, or have practiced law for 8 years.

The jurisdiction of each superior court extends to the departments and provinces which form its respective judicial district, as laid down in the organic law of 1912 and modified by the law of 1920. The superior courts are primarily courts of appeal, although they have original jurisdiction over certain cases. For instance, all violations of the law on the part of prefects, judges of the first instance, or district attorneys in performance of their duties are brought directly before the superior courts. They are given appellate jurisdiction in cases heard by judges of first instance, in cases of judgments of confiscated goods rendered by the customs officials, and in private arbitration awards.

Like the supreme court, the superior courts are called to perform certain duties not strictly judicial in character. They elect their own officials, propose double lists of three names for nominations to the government for its appointments of judges of the first instance, appoint the justices of the peace from lists of nominations submitted by the courts of first instance, remove, suspend, or fine the justices of the peace for failure to perform their duties properly, and name and remove the jailors and other prison officials within their jurisdiction. They too are expected to see to it that justice is administered promptly and impartially within their jurisdiction and to take all the measures necessary to the accomplishment of this end. For instance, they are authorized to appoint one of their judges at any time to visit one or more of the tribunals of their district to make an examination and report. They may be called upon both by the government and the

supreme court for information concerning matters under their jurisdiction.[2]

The judges and prosecuting attorneys of the superior courts are subject to trial by the supreme court for any violations of the law in the performance of their functions. They automatically lose their positions if they are convicted of any offense. They are also subject to summary removal or suspension at the hands of the supreme court for certain legal causes, such as sickness, negligence in the performance of their duties, immorality, or dishonesty. The judges of the superior court are also subject to removal in another way. According to article 152 of the new constitution, the commissions of all judicial officers of the first and second instance must be approved by the supreme court every 5 years. Failure to receive this ratification automatically nullifies the appointment. The age of retirement for the judges of the superior courts is 75 years.

Below the superior courts we find the judges of first instance. The organic law does not determine their number or jurisdiction but leaves it to special laws. According to the budget of 1924, provision was made for 138 judges of the first instance; Lima, the most populous district, receiving 27, while Lambeyeque received but 3. The judges of the first instance are appointed by the executive from a double list of three names proposed by the superior courts of the district concerned. The qualifications of a judge of the first instance are: Peruvian by birth and active citizenship, at least 25 years of age, and to have been a relator or clerk of a court for 3 years or to have practiced law for an equal time. Like judges of the superior courts, the appointment of judges of the first instance must be confirmed by the supreme court every 5 years, and their service is subject to certain legal requirements of a similar nature. For infractions of the law committed in the performance of their duties, they are under the jurisdiction of the superior court of their district.

The functions and mode of procedure of the judges of the first instance are given specifically and in considerable detail in the organic law on the judicial power. (Arts. 91 to 104.) They, too, have original and appellate jurisdiction and in addition perform functions of an administrative nature. Their original jurisdiction covers both criminal and civil cases, ecclesiastical matters, questions of marriage and divorce, and litigations concerning mineral and water rights. In all important criminal cases the judge of the first instance acts in a similar capacity to the *juge d'instruction* in France, that is, he holds a preliminary hearing, and presents a *dossier* containing all the evidence and his opinion to the correctional division of the superior court. All cases heard by the justices of the peace may be appealed to the

[2] For the detailed list of functions of the superior courts, see, *Ley Organica del Poder Judicial 1912*, arts. 80, 81, 226, 240.

judges of the first instance. They are authorized to settle any conflicts of authority between the justices of the peace of their district. They also are authorized to summon, fine, or suspend the justices of the peace, clerks, and solicitors for illegal acts committed in the exercise of their duties.

The lowest group of the judicial hierarchy are the justices of the peace. The constitution prescribes that there shall be justices of the peace in all villages and towns. As already noted, they are appointed by the judges of the superior courts from names submitted by the judges of the first instance. The qualifications are active citizenship, residence in the place where the charge is held, and ability to read and write. The law of December 1, 1900, recommends that those be given preference in appointment who hold a professional title, or are proprietors of landed property, or carry on an industry of such sort that they pay some contribution to the state. The office is without remuneration and for the term of one year.

The principal function of the justices of the peace is to administer justice in civil matters where the amount does not exceed £p20 and to render decisions in criminal matters for misdemeanors. In case a place lacks both judges of the first instance and their substitutes, the justices of the peace may serve in certain cases and turn the matter over to the tribunal specified in others (art. 121, organic law). Under such circumstances they may also exercise certain administrative functions pertaining to the jails which are ordinarily performed by the judges of first instance.

In addition to the regular judges, there are a specified number of substitute judges and attorneys elected by the various tribunals annually to fill the places of those who for some reason or other are absent for periods of more than 2 months. The other principal judicial functionaries found in the Peruvian tribunals are the relators, secretaries of the chambers, and the clerks. The relators are required where the pleading is by written documents and where more than one judge is on the bench. They read and summarize the case, pointing out any defects or omissions in the presentation. At the end of each judicial year the superior court designates certain lawyers as defenders of the poor, who defend the interests of those unable to pay.

The public is generally permitted to be present at hearings, although private sessions are permitted upon occasions. Article 154 of the constitution declares that the tribunals may discuss in secret, but the balloting must be done aloud and public. The president of the court designates daily the cases which are to come up the following day and the relator gives notice in writing to the lawyers of the interested parties. The eldest judge always occupies the middle chair unless the president of the tribunal is present. The judges are not allowed to leave their seats during a hearing. When the evidence is all in,

the accusation and defense heard, the judges remain alone, and discuss the case. If possible an immediate vote is taken. Both concurring and dissenting opinions may be expressed. The sentences must state the law or facts upon which they rest.

The procedure in a criminal case as laid down by the *Codigo de Procedimientos en materia Criminal* is approximately as follows: When a crime has been committed or accusation made the prosecuting attorney obtains all the evidence available and the preliminary hearing is held before the judge of the first instance. The accused must be represented by a lawyer to defend his interest at this preliminary hearing. The judge is expected to summon all material witnesses, who must be examined separately during the preliminary hearing. The judge may call experts whenever he deems it necessary. The preliminary hearing is concluded when the judge deems that all the essential facts for the oral hearing have been obtained. At the conclusion, both the judge and prosecutor render opinions as to the guilt of the accused. These, together with all the evidence in written form, photographs, etc., are made up into a *dossier* and sent by the judge of the first instance to the president of the superior court. The *dossier* is then turned over to the district attorney, so that he may prepare his accusation. This accusation must be in writing and prepared within 8 days. The district attorney is expected to visit the accused to obtain any information necessary. The accusation contains a summary of the case, the prosecutor's opinion on the law involved, and his recommendations regarding witnesses and experts who should be called for the trial. Within 3 days after receiving this accusation the court must make all the necessary preparation for the trial.

The trial is usually public. The three judges of the correctional court and the district attorney are seated on the rostrum, the lawyer for the defense below at the left, and the accused directly below and facing the judges, the witnesses occupying an adjoining room, subject to call. The trial opens with reading by the relator of the opinions of the trial judge and the prosecuting attorney and the statement of the accused. The president of the court then examines the accused with a view to bringing out all the essential facts of the case, both the prosecuting attorney and the defense having the right to request him to ask questions of either witnesses or accused. The witnesses testify who have been heard in the preliminary examination. The prosecutor may then examine both witnesses and accused. This is followed by reading the written evidence or documents in the *dossier* by the relator, the president asking the accused what he has to say regarding them. The prosecutor than takes the floor and summarizes the evidence with a view to fixing the responsibility for the crime. He may conclude with a statement of the punishment which he thinks the case requires. If there are any civil matters involved, the lawyer in

charge of this phase then makes his arguments. Finally comes the plea of the defense with a view to obtaining acquittal or a diminution of the penalty sought by the prosecutor. The room in then cleared and the judges discuss the case and form their decision. Two out of three votes are sufficient to condemn or acquit.

There are certain judicial forms and guaranties prescribed by the constitution. A process once closed may not be reopened. Any declaration obtained by force is without value, and no one may be condemned except in accordance with existing laws applicable to the case and by the judges established to enforce these laws. All judgments by commission are forbidden. Trials by court-martial, except in times of national war, are limited strictly to persons in military service. No one may be arrested without a written order from the competent judge or from the authorities charged with maintaining public order, except when caught in the act, and in any case he must be brought before the competent judge within 24 hours. Anyone imprisoned may ask that a writ of habeas corpus be issued. No one may be imprisoned for debts.

On the whole, the court system in Peru is well organized and enjoys the confidence and respect of the public. Such criticism as exists seems to be directed toward the judges of the first instance and the justices of the peace. And here the fault seems to be the inadequate salaries paid the judges of the first instance and the fact that the justices of the peace receive no remuneration at all from the state. Under these circumstances it could hardly be expected that a high standard of service could be maintained in these branches. But a defect of this sort can easily be removed when the country becomes sufficiently prosperous to render adequate compensation for the services required. One means employed to raise the standard of service merits special notice. The organic law (art. 89) provides that at the opening of the term of the court the outgoing president will read a report of the work done by his court during the past year, what defects have been noted in legislation, and any suggestions which he may have to bring about a more certain and prompt administration of justice. The reports of the presidents of the supreme court and the superior courts are published annually in the report of the minister of justice. These reports give an accurate and comprehensive viewpoint of the judicial system as it actually operates and furnish invaluable information for its systematic and intelligent revision.

No description of the judicial system of Peru would be complete without some reference to the codes.[3] At present there remains very little law covering the field of personal and property rights outside of

[3] A compilation of all the codes except the recent penal code has been made by Dr. E. García Calderón, under the title of *Constitución, Codigos, y Leyes del Peru* (Lima, 1923).

the codes. There is a civil code and a penal code, a code of civil procedure and a code of procedure in criminal matters. Business transactions are regulated by a code of commerce and shipping by a customs code. The mining industry of Peru is conducted in accordance with the mining code, and water rights are now governed by the code of waters. Finally, justice in the army and navy is now meted out in accordance with the code of military justice and the code of the military marine.

With the establishment of independence there was an immediate reorganization of the political system of Peru, but the common law of the country remained practically unchanged. However, a need for a revision of the civil and criminal laws was speedily felt, and by a decree of January 31, 1825, Bolívar named an eminent commission to formulate projects of civil and criminal codes, with a view to their adoption by the congress. Neither this commission nor one appointed by President Gamarra in 1831 was able to carry out the difficult task. The constitution of 1834 intrusted the task to the supreme court. That body accepted the labor and published its projects in 1834 and 1835, but they were not accepted by the congress. During the protectorship of Santa Cruz, the civil and penal codes of Bolivia were introduced, but they remained in force only while Santa Cruz was able to enforce them. In 1845 the congress authorized President Castilla to appoint a committee to draft projects of the codes most necessary for the nation, commencing with a civil code and a code of civil procedure, and continuing with a penal code and a code of criminal procedure. This committee reported on projects for a civil code and a code for civil procedure in 1847, and was thereupon authorized to continue work on a penal code, a code of commerce, and a mining code. The two codes presented were thoroughly discussed by congressional committees, and were finally promulgated on December 29, 1851, to take effect from July 28, 1852.

The bases of the civil code seem to have been three—the ancient Spanish legislation, the Napoleonic code, and the code of Santa Cruz. The similarities to the latter are particularly evident.[4] The civil code itself consists of 2,301 articles divided into three books. The first treats of persons and their rights; the second treats of property, how to acquire it, and the rights that people may have over it; the third and most extensive covers obligations and contracts.

> In many ways this code may serve as a model . . . it is edited in a clear and concise form, yet with a constant effort to be complete; the bonds of attachment to the traditional law are retained, but rendered more flexible; the boldness of certain dispositions, the insistence upon justice even at the expense of somewhat laborious regulations, the development

[4] For a brief comparison, see A. Benavedes Loredo, *Bosque sobre la evolución política y juridica de la época Republicana del Perú* (Lima, 1918), p. 246.

of an ancient law in a new world with the influences of environment which it has undergone and which have rendered it more fecund, all this presents an interesting spectacle both for the sociologist and the jurist.[5]

As already noted, the code of civil procedure was adopted at the same time as the civil code. But where the latter remains in force practically unchanged, the former has now been supplanted by a new code of civil procedure which went into effect July 28, 1912. Numerous efforts were made to reform the original code of civil procedure by the government, but without success. Finally, in 1904, a group of eminent jurists, presided over by Doctor Luis F. Villarán, proceeded to make a revision upon their own initiative. They finished their labors in 1908 and the code was adopted by the congress in 1911.[6] The code of civil procedure consists of 1,348 articles, divided into three sections. The first section lays down the general rules of procedure applicable to all cases, the second covers trial procedure, and the third non-contentious judgments.

After reporting out the two civil codes, President Castilla's committee continued work upon a penal code and a code of criminal procedure, but no report was made. In 1853 a new congressional committee of three senators and five deputies was named which presented a draft penal code. A new committee appointed in 1861 revised it and also prepared a code of criminal procedure. The supreme court passed on these projects and the congress approved them September 23, 1862. Both were promulgated January 1, 1863. Both codes have recently been completely revised and the present code of criminal procedure went into effect March 18, 1920, and the new penal code was promulgated July 28, 1924.

The penal code of 1924 has 418 articles and is divided into four books. The first is devoted to general regulations covering such subjects as the jurisdiction and application of the penal law, its guaranties, and the general scope and limitation of the punishments. The second gives the specific punishments for various kinds and classes of crimes, the third for misdemeanors, and the last covers a few special applications of the penal law. It is interesting to note that the death penalty is abolished in the new penal code.

The code of procedure in criminal matters which went into effect in 1920 consists of 365 articles. It too is divided into three books or sections. The first is almost entirely devoted to the procedure in the preliminary hearing before the judge of the first instance; the second covers the trial proper before the correctional court, which is merely the criminal division of the superior court, and the rules for appeal; the third covers special procedure and the resort to habeas corpus. A fourth book was devoted to the employment of the jury system, but this book failed to meet the approval of the congress.

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[5] Raoul de la Grasserie, *Code Civil Péruvian* (Paris, 1896), p. 72.

[6] For brief historical sketch, J. G. Romero, *Estudios de Legislación procesal* (Lima, 1914), p. v.

The commercial law for both Spain and the colonies was the so-called *Ordinanzas de Bilbao.*[7] The protector Santa Cruz appointed a committee to draft a commercial code, but before any report was made he was out of power. The law of December 23, 1851, authorized the adoption of the Spanish code of commerce for Peru, with such modifications as should be deemed necessary. A commission made the revision, and the code of commerce went into effect June 15, 1853. An executive decree of February 28, 1898, authorized a commission to adapt the Spanish code of commerce of 1885 to the Peruvian needs and form of government. The commission carried out its mission, and with some modifications the congress approved the project. A law of bankruptcy procedure was added and the new code of commerce and law of bankruptcy went into effect July 1, 1902. The code consists of 966 articles, divided into four books. The first book is devoted to merchants and commerce in general; the second covers special contracts in commerce, as, for example, the organization of commercial and stock companies; the third is devoted to maritime commerce; the fourth has to do with suspension of payments and bankruptcies, and the regulations for mercantile registry. Perhaps mention should also be made of the recent important law in this field, the law on the mortgaging of vessels (*hipoteca naval*) passed December 30, 1916.

Closely allied to commercial law are the regulations for port charges and merchant vessels. From 1862 to 1868 an official compilation of laws on this subject made by Doctor J. T. Flores, fiscal agent of Callao, served as a code. In 1888 a new set of regulations were adopted, which held till 1900. However, in 1896 the same Doctor Flores presented a project for a code of the merchant marine and regulations for port charges. A committee was appointed by executive decree to study the project and make any necessary alterations or additions. The new code of the merchant marine and regulations for port taxes entered into effect July 28, 1900. This code remained in effect until May 11, 1920, when it was superseded by the present code of customs. This code has 289 articles, divided into 16 chapters. The following are some of the principal topics treated: maritime, river, and lake traffic; arrival, discharge, and departure of vessels; cargoes; customs operations; free goods; contraband; administration of customs.

When Peru obtained her independence she simply took over the mining laws of Spain, except where they were contrary to the principles of liberty and independence.[8] The colonial laws were applied in the following order: (1) the *Ordenanzas de Méjico;* (2) the *Ordenanzas del Perú;* (3) the *Ordenanzas de España del Nuevo Cuaderno;* (4) the

[7] For a brief historical sketch see A. B. Loredo, *op. cit.*, p. 257; also A. M. de la Lama, *Codigo de Commercio del Perú* (Lima, 1902), pp. XXIV–XLII.

[8] For a brief sketch of the historical background of the mining code, see A. B. Loredo, *op. cit.*, pp. 261–267.

Leyes de Partidas. Various efforts were made to codify the mining laws, beginning with Santa Cruz in 1837 and ending with the project presented by the National Association of Mining in 1900. With a few changes this last project was promulgated by President de la Romaña July 6, 1900, and went into effect the first day of the following year. The mining code, the shortest of all the Peruvian codes, consists of 220 articles, divided into 18 chapters. The code covers mining property in general, mining concessions, mining taxes, the administration and control of mining properties, relations between the concessionaire and the owner of the soil and between the proprietors of the mines, regulations for the exportation and working of the mines and all matters of a financial and technical character pertaining to them. In connection with the mining code, mention should be made of the change brought about in articles 90 and 28 by the law of November 3, 1911, and the recent important law of January 2, 1922, regulating concessions for the discovery and exploitation of petroleum.

Just as in the case of mining regulations, so in the case of water-rights, the colonial laws were adopted by the new republic. However, in the case of the laws covering waters, the basic regulations were two given during the colonial period for the valleys of Lima, and for the valleys of Chicoma, Santa Catherina, and Vinu. The first was known as the *Reglamento de Cerdán*[9] published in 1793, but which originated in certain decrees published in 1617. The other was given by Dean Saavedra of the Cathedral of Trujillo[10] and took effect about 1700. The first specific regulations made by the republic of Peru came in 1841, when President Gamarra, by executive decree of August 4, declared that the *Reglamento de Cerdán* should be enforced in all Peru except in the department of Trujillo, which remained subject to the ordinances of Dean Saavedra. An attempt was made in 1868 to extend the *Reglamento de Cerdán* to Trujillo, thus unifying the regulation, but after a year's experience the government went back to the former system. In the next few decades one or two abortive attempts to draw up codes were made, but it was not until 1899 when Doctor Romero, minister of justice, appointed a commission of agriculturists and lawyers to coordinate the principal legislation on the subject that success was achieved. Their project was approved by the congress with some modifications, and the code of waters was promulgated February 25, 1902.

The code of waters consists of 282 articles divided into 5 sections. The first covers the control of the various kinds of water—rain, river, lake, pond, and subterranean; the second treats of river-beds and banks of streams, accretions and deposits, protection against

[9] Text may be found in Enrique Patrón, *Leyes, Decretos, Resoluciones vigentes en el Ramo de Justicia* (Lima, 1901), vol. I, pp. 327–515.

[10] *Ibid.*, pp. 5–313.

floods, and drainage of lagoons and swamps; the third regulates the various servitudes and water rights; the fourth treats of public water-supply; the fifth covers the policing of waters and community and syndicate control. The vital importance of such a code for Peru was cogently set forth by Doctor Romero in an address made in 1902 before the University of San Marcos:

> In no country, perhaps, is a law of waters so indispensable as in Peru . . . . The topography of our country makes it most essential. The lack of rain, the great heat, the aridity of the great plains, and the paucity of rivers make it indispensable for the central region that the various possible water-supplies be determined with precision. The high plateaus and valleys of the sierra, which do not receive sufficient rainfall, also require a certain amount of water from the streams and rivers. Finally, the great rivers of the mountains should be the object of particular attention . . . so that the state may enjoy the many advantages to be derived from them.[11]

Military law in Peru until about the beginning of the twentieth century was based upon the ancient Spanish "military ordinances," dating back to 1768. In fact, the military laws of Spain were binding in Peru even after they had been declared obsolete by the mother country herself. As in the other codes, numerous attempts to establish a new system of military law were made before success was finally achieved. An executive decree in 1845 looked towards the project of a new code of laws in this field. A law of 1863 established a congressional committee which reported back a project in 1865 which the chambers accepted, but which was never promulgated. However, a project presented to the congress by President Piérola in 1898 received legislative sanction and was promulgated December 20 of the same year. It went into effect 30 days later, January 20, 1899. Unfortunately, the question of its constitutionality arose. When the question was brought before the supreme court, this body in full session presented a project of reform which would exclude all civilians from the jurisdiction of military law. The lower house immediately voted to suspend the new code and bring back the *ordenanzas militares*. The senate, however, refused to accept such a radical step, and the code of military justice of 1899 is still the law of the land. However, it has been partially reformed by the two laws of October 26, 1906, and the law of September 3, 1917.[12]

The code of military justice contains 743 articles divided into 4 books. The first book has as its title "The Organization and Attributes of Military Tribunals," the second book, divided into two parts, covers the field of violations of the military regulations, and the corresponding punishments; the third book, in four parts, takes

[11] Enrique Patrón, *op. cit.*, pp. VII–LIX.

[12] For the constitutional question see P. Fuentes Castro, *Codigo de Justicia Militar* (Lima, 1899), pp. XXI–XXVI. For the historical background see A. Benavedes Loredo, *op. cit.*, 269–274.

up the whole question of judicial procedure; the fourth book is devoted to minor offenses and their punishment.

Little attention was paid to naval offenses and their punishment until after the war of the Pacific, although a committee had been named in 1877 to draw up regulations for the military marine. Another committee named in 1885 completed the labor, and the code of the military marine was approved by the congress October 25, 1886, and promulgated 5 days later. This code, the longest of the Peruvian codes, is in two volumes, the first containing 886 articles and the second 1077. The first volume covers the organization and regulations for all the land forces of the military marine, while the second does the same for the sea contingents.

This brief outline of the codification of law in Peru shows that the republic of Peru, having adopted the system of codified laws has endeavored to render it successful and satisfactory by constant revision. With the recent revision of the penal code the system is practically up to date and offers little ground for criticism. In fact, an impartial observer, viewing the whole judicial system of Peru, would readily concede that the state possessed a soundly developed and well-organized body of laws, and with the exception of the judges of the first instance an able and adequate judiciary to interpret it.

CHAPTER VII.

TERRITORIAL AND MUNICIPAL GOVERNMENT.

The internal organization of Peru resembles very much that of France. The government at Lima, just as the government in Paris, by its control of the prefects and subprefects, has its finger on the pulse of the entire nation. The territorial division into departments and provinces in Peru, like the departmental division in France, is based partly upon administrative expediency and partly upon geographical configurations and natural growth. Each country might serve as an example of a highly centralized system of administration. However, one remarkable difference should be noted. In France, the homogeneity of the people and the geographical continuity of the country seem to be ideally adapted to a highly centralized system, while, on the contrary, in Peru the configuration of the country, the varied interests of the different regions, and the large population of Indians as yet unassimilated into the body politic, make the problem of centralized control a very difficult one.

The law of September 3, 1831, provided that the departments, provinces, and districts then established should retain the existing boundaries. The law of January 17, 1857, on the internal organization of the republic, declared that the territory of the republic was divided into departments and littoral provinces; the departments were divided into provinces and the provinces into districts. However, this law also retained the existing boundaries. The constitutions of 1860 and 1920 kept the same divisions, making the demarcation of the limits subject to law. New departments and provinces were created by laws from time to time, but under the constitution of 1920 all departments and provinces created in the future must be approved by the legislative power in the same fashion as amendments to the constitution.

At the present time Peru is divided into 20 departments, the constitutional province of Callao, and the littoral provinces of Moquegua and Tumbes. The departments are divided into 113 provinces, and the provinces into 930 districts. The administrative division of the 6 most important departments is as follows: Ancash, 8 provinces, 82 districts; Arequipa, 7 provinces, 82 districts; Cajamarca, 8 provinces, 67 districts; Cuzco, 13 provinces, 71 districts; Lima, 7 provinces, 82 districts; and Puno, 8 provinces, 78 districts.[1]

According to articles 136 and 137 of the constitution of 1920, the

[1] *Statistical Abstract of Peru*, 1920, p. 7.

internal political organization is somewhat as follows: In the departments and littoral provinces are prefects under the direct control of the executive and appointed by him; in the provinces are subprefects, responsible to the prefects but named by the executive; in the districts are governors, responsible to the subprefects, but appointed by the prefects; whenever it is necessary the subprefects are authorized to appoint lieutenant-governors, who are made responsible to the governors. The qualifications for these offices laid down in the organic law of 1857 are the following: For prefects and subprefects active citizenship and at least 5 years' residence in the republic; for governors and lieutenant-governors active citizenship and at least 3 years' residence in the republic.

The constitution of 1860 made these political officials responsible for the enforcement of the laws, the execution of judicial decisions, and the maintenance of public order, but the constitution of 1920 provides that their duties shall be determined by law. The law of 1857, which still controls, is an amplification of the general provisions afterwards inserted in the constitution of 1860. In their respective jurisdictions the prefects and subprefects are responsible for the public tranquillity, good order, and the protection of life and property; they must see to it that the constitution, the laws and resolutions of the congress, and the decrees and orders of the executive are promptly and exactly enforced; they have jurisdiction over the execution of judgments and sentences of the courts; they are expected to make every effort to capture bandits and malefactors and refugees, and to keep vigilant watch over tramps, beggars, gamblers, and other undesirable persons. They must carry out all orders of their superior officers, but when such orders are contrary to the constitution or laws they enforce them upon their own responsibility.

In addition to these general provisions for the administrative officials as a body, each group is assigned certain specific functions. For instance, the prefect must give orders for the verification of the election returns of all popularly elected officials from the president to the functionaries of the municipalities. Residing ordinarily in the capital of the department, he is expected to visit at least once during the period of his term of office all parts of the department to become acquainted with its needs, to see that the laws are being enforced, and to hear any complaints that are directed against the public officials, and to make a report of his trip to the central government, incorporating any suggestions for betterment which he may deem suitable. The subprefects are supposed to make a similar visit to all the districts of the province for the same purpose. The positions of governor and lieutenant-governors are obligatory and without pay and the persons appointed must serve for 2 years. They merely act as agents for the subprefects, posting regulations and reporting derelictions. The

terms of office of the prefects and subprefects are solely determined by the government, although the regional congresses may now solicit their removal. The pay of the prefect ranges from £p483 to £p960 annually, the prefect of the department of Loreto receiving the latter sum. Most of the subprefects receive £p270 per year.

Although a highly centralized prefectoral system may be the most efficient system of government, it is almost invariably bureaucratic, and outside of the capital usually unpopular. By the very nature of the case it is antipathetic and prejudicial to local autonomy. Peru is no exception to the rule, and there has long been a strong current of opinion outside of Lima, and particularly in the south, for less centralization. In fact, some of the advocates of decentralization have gone so far as to demand a federal system of government. According to Doctor Pedro S. Zulen, a close student of the anticentralist movement, two tendencies might be noted:

> One, radical in the extreme, which sought to go straight forward without half-way measures, either by reason or by force to a federal system; the other, which might be called regionalist, because it was content to reform the organisms of the state in the direction of regional autonomy for the administration of rents and local interests. Such a system would prevent the subjection of the various regions to the mercy of the autocratic, enervating, and demoralizing will of the central government without constituting federal states or changing the territorial boundaries or creating new parliamentary and executive institutions.[2]

A short step towards decentralization was taken in 1886, when the law for fiscal decentralization was passed. This law attempted to divide the national income into two parts, one to be used for general expenses and the other for departmental expenses. As far as possible, the departmental taxes were to be expended in the departments where they were raised. For the collection and expenditure of departmental revenues "*juntas departamentales*" were organized, consisting of the prefects and delegates from each province elected by their respective provincial councils.[3] The departmental boards were not successful and from 1900 on, practically every "*Memoria*" of the minister of finance contained a criticism of the system. The "*juntas departamentales*" were finally suppressed by the law of March 14, 1921, and all the departmental revenues were turned over to the municipalities, except those designated by special laws for particular public services.[4]

About the year 1915 the question of decentralization received much attention. In February and March of this year Doctor Pedro S. Zulen published his series of articles on the subject in *La Crónica*, and they were widely reprinted in the republic. After a trip of investigation through the southern provinces, he was convinced that

[2] *La Crónica* (Lima), June 16, 1915.
[3] For text of the law of Nov. 13, 1886 see *El Peruano*, 1886, vol. II, No. 55.
[4] Text in G. U. Olaechea, *La Constitución y Leyes Organicas del Perú* (Lima,) 1922, p. 532.

these regions were quite justified in demanding that the guaranties of the individual and an honest ballot be assured at the hands of the central government; that their contributions should not be wasted and their needs should be recognized. A federal system, however, he felt was not the solution. Rather did he favor a series of reforms, such as the annulment of the code of military justice; the suppression of the departmental juntas and the translation of their functions to the municipalities; the restoration of their property to the Indians; electoral guaranties; reduction of the forces of line; and humanization of the law of obligatory military service.

In June of the same year, Señor Carlos Chirinos Pacheco published a very careful study of the problem in *El Pueblo* of Arequipa, pointing out the difficulties presented by the proposal to establish a federal system and urging closer unity and a more intense national spirit. The national democratic party also came out against the idea of federalization, but stood strongly for administrative decentralization, in so far as it did not interfere with the economic equilibrium of the state, and for intellectual decentralization by maintaining and improving the minor universities. As a more effective agency of administrative decentralization, the platform recommended the extension of the powers of the departmental juntas.[5]

Augusto B. Leguía, in his election campaign of 1918, had this to say on the subject:

> The regionalistic tendencies which are observed to-day and which are troubling certain spirits are for me an evident sign of a reviving social wellbeing . . . . for these manifestations signify the beginning of a healthful reaction against centralistic methods. . . . The centralization that enslaves everything in our midst has not only mortgaged the energies of the local organisms, bringing about an assimilation which both interferes with and destroys their powers, but has also sown in their souls the germs of doubt, the indifference and disdain for all that pertains to the health and renaissance of the fatherland. . . . For these reasons, from a practical standpoint, I favor regionalism.[6]

Upon taking over the presidency, Mr. Leguía gave evidence of his desire to put his ideas into practical operation. In his famous decree of July 9, 1919, submitting a program of reform to the people for their approval, the fourteenth article reads as follows:

> Three regional legislatures shall be established, corresponding to the north, center, and south of the republic, with deputies elected by the provinces at the same time as the national representatives. These legislatures will hold annual sessions for 30-day periods. Their functions will be established by a special law. They are absolutely forbidden to consider personal matters. Their resolutions will be communicated to the executive for their enforcement. If he considers them incompatible with the general laws and with the national interest, he will submit them with his observa-

[5] P. Dávalos y Lissón, *La Primera Centuria* (Lima, 1919), vol. I, p. 117.
[6] *Ibid.*, p. 123.

tions to the congress, which will proceed with them in the same fashion as with vetoed laws.[7]

This article was incorporated verbatim as article 140 in the new constitution.

An executive decree dated July 25, 1919, provided for the provisional organization of these legislatures and laid down their functions until a law on the subject should be enacted. The organic law (law No. 4504), known as the law concerning the functioning of the regional congresses, went into effect March 23, 1922.[8]

By the terms of this law, three regional legislatures were established, that of the north having 39 deputies, that of the center 33, and that of the south 38, one deputy being chosen from each one of the provinces named. It was further provided that the number of regional deputies could not be changed except by an amendment to the constitution. The qualifications for a regional deputy were the same as those for a national deputy; they were to be elected at the same time and for the same length of term. They were to enjoy the same immunities, and their offices were forfeit for the same causes as for national representatives. They were each allowed a salary of £p100 a year and an allowance for traveling expenses in accordance with their residence, but never to exceed £p50. Like national representatives, reelection was permitted and, contrary to the provision regarding national deputies, they were allowed to resign.

The principal functions of the regional congresses as prescribed by the organic law are as follows: To promote the development of local interests and pass resolutions regarding the construction of public works in the respective regions; to lay excise taxes for this class of work for the period of time necessary to cover the cost, but they can not impose them by increasing the rates of general or special taxes, nor may they place them upon objects of primary necessity; they may ask the removal of the political authorities such as prefects, subprefects, and governors, expressing the causes upon which the demands are made; they may accuse before the government and the supreme court respectively public employees and judicial functionaries found lacking in capacity or vigor in the performance of their duties; they are authorized to supervise the communal administration, and see to the strict enforcement of laws regarding primary instruction and obligatory military service; they may pass and nullify laws regarding local affairs and initiate national laws concerning regional interests; and they are directed to formulate the regional budget.

In regard to sessions and procedure, the law provided that the regional legislatures should convene May 29 every year and remain in session for 30 working days. Each legislature was given the right

[7] *El Peruano*, 1919, vol. II. p. 965.

[8] For text of the decree see G. U. Olaechea, *op. cit.*, p. 463; for the law, *ibid.*, p. 589.

to decide where it would meet the following year. According to the terms of the executive decree, the first session in the north was held in Cajamarca, that of the center in Ayacucho, and that of the south in Cuzco. The rules for procedure are approximately the same as for the national congress. As we have already seen, their resolutions are subject to the president's veto power, just as national legislation.

These regional congresses have now been in operation approximately 5 years, so that it is possible to form an estimate as to the success of the experiment. An attempt was made to obtain an expression of opinion from a large number of business men, professional men, professors of the universities, and representatives of the government. The general concensus of opinion was that they were a complete failure. While it was generally conceded that there was a need for greater decentralization, the results obtained by the regional congresses have been so meager that the question of their suppression has already been seriously raised. Even where they were not positively criticized they were regarded as useless—a fifth wheel to the coach—as one of those interviewed expressed himself. There was a widespread sentiment that the money spent in maintaining them was wasted and might much better be employed for more substantial benefits.

While the principal objection raised against the regional congresses was their futility—their lack of accomplishment in their 5 years of operation—other definite charges were brought against them. It was claimed, particularly in the south, that although the congresses were established to represent the regions they utterly failed to do so. The nominations it was claimed were made in Lima, the representatives were controlled by Lima, and oftentimes they actually had their residence in Lima. It was felt that their jurisdiction was too restricted and that their powers in relation to those of the national congress not clearly enough defined. It was said that the men selected were not qualified for the task, but at the same time that these bodies were so impotent that really able men refused to serve. An example of their futility was cited by Señor Alfredo Forga of Arequipa. Acting for the Forga family, he offered to establish a school of arts and crafts in Arequipa in memory of his father, and made the proposition to the regional congress of the south. Although the benefit of the proposal was clear, the congress finally decided that the offer could not be accepted because the national congress had already made provision for a similar school. Needless to say, Arequipa still lacks a school of this kind. But even when these congresses did pass resolutions, a large proportion of them were nullified by the central government.

Doctor Jorge Polar, formerly president of the University of Arequipa, pointed out to the writer why, by the very nature of things, the regional congresses were bound to fail. His theory was that Peru can not be divided into three regions because the division is

completely artificial. Not only is there no historical foundation for the division, as there is for the departments, but the division violates both geographical and economic bases. For instance, while Cuzco, Puno, and Arequipa are all in the southern region, they are geographically far apart, and their populations are of a very different character, those of Cuzco and Puno having a large proportion of Indians, while that of Arequipa is largely mestizo. Finally, the economic resources and needs of the three sections are equally divergent, for while Cuzco is rich in potential mineral wealth and in its vast opportunities for grazing and the cultivation of crops, Arequipa must depend mostly upon small haciendas producing cereals, sugar, grapes, and cotton. Furthermore, the deep-seated jealousy between the three cities makes any project uniting them into one administrative unit practically sure of failure.

But while public opinion, particularly in the south of Peru, was unanimous in condemning the regional congresses as a solution for the problem of more decentralization, there was a wide divergence of opinion as to how the needed reform might be accomplished. A few suggested changing the organization of the regional congresses, have the representatives elected at the same time as the municipal elections instead of with the national congressmen, and have them elected by departments instead of districts. At the same time, these bodies would have to be given more power and more definite jurisdiction. The majority, however, favored their suppression and more power given to the municipalities, with some scheme of administrative decentralization whereby the departments might have control of their own revenues. There seemed to be little confidence in an out-and-out federal system for two reasons: the electorate of Peru is not yet of a character to maintain such a complicated system and the national feeling is not yet strong enough to risk federalization. But whatever scheme of decentralization is adopted, it apparently will not be successful if based upon the present system of regional congresses.

Of all the divisions of government, perhaps the most ancient and the closest to the people is the municipal government. Adapting itself necessarily to the customs and traditions of the region, it has had a slow, steady growth, seldom subject to violent changes. It might be possible to trace the form of municipal government in Peru back to the Roman curia or the commune of the Middle Ages, but it is sufficient to note that it descends directly from the Spanish *cabildos* or town councils, which were transplanted to the New World, and afforded the colonists a slight opportunity for self-government.[9] In fact, it is said that four days after Lima was founded Pizarro es-

[9] For a brief sketch of the *cabildos* see Carlos Concha, *Regimen Local*, *Revista Universitaria*, 1918, vol. II, pp. 178–188.

tablished the *cabildo* of Lima with its *regidores* or aldermen and its *alcaldes* or justices. The atributions, functions, and privileges of these officials were given in detail in that famous collection of colonial legislation known as the *Recopilación de Leyes de Los Reinos de Las Indias.*

The government of municipalities under the republic of Peru may be said to have begun with San Martín's *Estatuto Provisional* of October 8, 1821. Article 1 of section VI declared that the municipalities should be maintained in the same form that had hitherto prevailed, and that they should be under the general direction of the president of the department. The constitution of 1823 was more specific. It provided that in all towns, whatever might be their size, there should be a municipal government consisting of a mayor, councilmen, and *síndicos* or trustees. The municipal government was authorized to direct the local police, allocate funds for local purposes, pass municipal ordinances, and promote agriculture, mining, and general industry. The mayor or mayors were to serve as justices of the peace. The constitutions of 1828 and 1834 were more general in their provisions, leaving the details to be settled by law. The constitution of 1839 eliminated municipal governments, assigning their functions to the intendants of police. They were restored by the constitution of 1856; the law of December 9 of this year provided for their organization. The constitution of 1860 merely declared that municipal governments should exist, but left all the details of organization to a law. The law of May 3, 1861, provided the necessary organization and remained in force until the organic law on municipal government of April 9, 1873, supplanted it. Finally, during the presidency of Morales Bermúdez, on October 14, 1892, a new organic law on municipal government was promulgated which took the place of all previous legislation on the subject and is now in force.

According to the terms of this law, the municipal administration of the republic is carried on by provincial councils in all the capitals of the provinces and by district councils in all the district capitals which are not capitals of provinces. The provincial councils which are in capitals of departments consist of 16 councilmen elected by popular vote and 1 delegate elected by each one of the district councils of the province in addition. The provincial councils which are not in the capitals of departments consist of 12 councilmen elected by popular vote and the district delegates elected by the district councils. The provincial council of Lima consists of 40 councilmen elected by the people and of the corresponding district delegates. The popularly elected councilmen and the district delegates possess exactly the same attributes and powers.

The qualifications for city councilmen are not very difficult to meet. Any person of age who knows how to read and write and who

possesses a residence in the respective capital is qualified to serve. A few specific exceptions are made, such as soldiers, political and judicial employees, and those who have any interest, financial or otherwise, in the municipal government. Naturally, the physically unfit and those convicted of crime are ineligible. The councilmen receive no salaries, and if elected they must serve unless they fall into certain classes exempted by law. For example, exemptions are granted to those past 70 years of age, to those who have served for two or more consecutive periods, to anyone who happens to be the only physician or apothecary of his town, and to those whom the council itself may excuse for just cause.

According to the law of municipal elections of March 6, 1909, members of all provincial and district councils are elected for 2-year terms by direct popular vote. The elections take place the first Sunday in November every 2 years and continue 2 days. All resident Peruvians and foreigners of 21 years of age or married who know how to read and write are eligible to vote. However, it is further provided that only those whose names appear upon the register of municipal electors may actually enjoy the right of suffrage. This register is revised in the month of September of the election year, and after the register is closed the names are published in the daily or weekly newspapers.

The councils must meet at least twice a month in ordinary sessions, and they may meet in extraordinary sessions whenever the president of the council deems it necessary. An extraordinary session may also be called if five members of a provincial council or two members of a district council demand it. In such sessions only the subject mentioned in the call may be discussed. Twenty-one councilmen constitute a quorum in Lima, 9 in the department capitals, and 7 in the provincial capitals. Every councilman may participate in the debate and vote, and except in special cases the voting is public.

The organic law of 1892 lays down in some detail the functions of the councils. Article 77 declares that the provincial councils have the power to regulate, administer, and inspect the services of the inhabitants under their direction, and article 133 says that the district councils shall exercise in their territories all the functions of the provincial councils, with particular attention paid to the upkeep of the bridges and highways. Twenty-two functions of an administrative nature are then specifically put under the jurisdiction of the councils, but they may be grouped as follows: all matters of health both in factories and homes and the regulation of the sale of all foods or drinks of doubtful quality: the conservation and distribution of the water-supply; the building, inspection, and regulation of the streets and highways, and, as an essential attribute of this duty, they are given the power of eminent domain and apportioning the expense of new work among the proprietors in accordance with the benefits received;

the encouragement and direction of matters pertaining to the esthetic improvement of the towns, such as regulating the exterior construction of buildings, building parks, drives, and gardens, and giving encouragement to organizations, aiding in the scientific, industrial, or artistic progress of the region; the supervision of all public markets, slaughterhouses, pastures, prisons, and poor-houses, and also the regulation of public amusements and diversions; the formulation of a budget, the voting of taxes and the sale of municipal bonds subject to the approval of the central government, and since the law of 1921 abolishing the *juntas departamentales*, they have control of all the departmental income; finally, they are made responsible for the efficient services of the various public officials under their jurisdiction.

The actual work of administration performed by the provincial council is intrusted to a group of officials chosen from its own number, which generally include the following: an alcalde or mayor, a lieutenant-mayor, two syndics or trustees, and a number of inspectors such as the inspector of police, of markets, of waters, of works, of public amusements, of hygiene, and of any other administrative service which the council deems necessary. According to the organic law of 1892, these officials are all elected annually by the council itself, but a slight modification was made by the law of December 8, 1919, which provided that thereafter the provincial mayors should be directly elected by the people.

The mayors are the executives of the resolutions of the provincial councils, and they are charged with a large number of specific functions. Among other things, they preside over council meetings, see to it that the inspectors and other authorities fulfill their functions properly, exercise diligence to see that all national laws, executive decrees, and provincial regulations relating to the interests of the locality are duly enforced, provide for the prompt transmission of all official letters, petitions, and despatches coming to the secretariat to the proper persons, make the monthly treasury balance of the municipal corporation with the aid of the treasurer and report it within a week's time to the council, make an annual report on the various municipal departments and activities, the inspectors to furnish the necessary information regarding their branches whenever called upon to do so, visé all certificates or copies presented by the secretary or treasurer of the corporation, permit or refuse in writing licenses for public amusements or the opening of establishments requiring it, appoint and dismiss the porters, clerks, and minor officials, and make public proclamation of their resolutions or those of the council when they regard it necessary. They are authorized to call upon the subprefects and other subordinate governmental authorities to aid them by force if necessary for the proper enforcement of their resolutions.

Of the two syndics or trustees elected by the council, the one receiv-

ing the larger number of votes is placed in charge of the income, and the second takes control of the expenditures. They are expected to act as solicitors for the council in all cases requiring such services, to sign all public contracts entered into by the council, to watch over the proper administration and investment of municipal funds, presenting to the corporation's attention any faults or irregularities and suggestions for remedying them, and examine at the end of each month the record of expenditures to determine if they are made in accordance with law, and to publish monthly a report of the income and expenditure of the municipal treasury, this report to be signed by both.

The inspectors serve as chairmen of the council committees pertaining to their respective activities and also supervise directly the administrative activities under their jurisdiction, seeing to the enforcement of all laws, decrees, and resolutions which pertain to them The law also provides certain specific duties for some of the inspectors. For instance, the inspectors of instruction are charged with investigating to see if each village has sufficient schools, if the buildings are adequate, if the teachers are competent, and to require from each schoolmaster of primary instruction an annual report.[10] The inspectors of hygiene and vaccination are required to visit the drug stores to examine both the drugs and the competence of the person selling them, also to visit private dwellings and public establishments in order to establish regulations looking towards the improvement of sanitation and health conditions.

According to the organic law, each district capital which is not the capital of a province will have a council composed of a mayor and two councilmen elected by the voters and two trustees named by the provincial council. However, the municipal elections law of 1909 modified this provision so that where the number of electors exceeds 400 the voters elect a mayor, 2 trustees, and 7 councilmen (art. 58). As we have already noted, the district councils exercise practically the same functions in their territory as do the provincial councils in theirs. In such district capitals, where, because of the small number of inhabitants or through lack of political instruction, it is not possible to establish councils, one or more municipal agents may be appointed by the provincial council of the region to perform the necessary administrative functions of the district. Any village which is neither capital of a province or district, but which has more than 300 inhabitants, is entitled to have a municipal agent. This agent may be named by either the provincial or district council having jurisdiction. All municipal agents must be of age and have their residence in the place where they exercise their functions.

[10] It should be noted, however, that the new organic law of instruction of 1920 seems to relieve the municipalities of all connection with the public schools except to contribute to their support. See also executive decree of February 26, 1921, and declaration of director-general of instruction of March 5, 1921.

With this brief outline of the organization and functions of the municipal corporations in Peru as a basis, certain features perhaps deserve a word of comment. One outstanding peculiarity is the size of the councils. For example, the city of Puno, which is the capital of the province of Puno, is estimated by Doctor Wiesse to have about 8,000 people. However, as the province of Puno has 12 districts, the provincial council of Puno, according to law, would have 16 popularly elected councilmen, and because it is also capital of a department, 12 district delegates, making a total of 28 councilmen. Considering the population of the province and the character of work which such a body is expected to do, such a large body seems both unwieldy and unnecessary. The difficulty of transportation in the outlying regions of Peru must also be taken into consideration in relation to the frequent meetings of the councils. Inasmuch as the tendency in most countries to-day is to reduce the size of their municipal councils and centralize responsibility, Peru will undoubtedly give serious consideration to this feature of municipal organization when a new organic act on the subject is brought up.

Another noticeable feature in Peruvian municipal government is the total lack of separation between the deliberative and executive powers. As we have already noted, the inspectors of the various municipal services are members of the council and also serve as chairmen of the committees which have charge of their field of activities. Thus the executive power is not really centralized in the mayor, but in a sort of board of directors who both formulate and execute the program of municipal administration.

As to public opinion in Peru on the subject of municipal government, it must be said that although there is some dissatisfaction, on the whole no radical changes are demanded. The two principal complaints found in most of the cities outside of Lima are that there is too much control by the central government, and that the cities do not have sufficient revenues. It is true that the organic municipal law of 1892 is very specific in giving the central government revisionary powers over both the provincial council of Lima and over those of the provinces. It is also claimed that the prefects often interfere with the work of the provincial councils, and that the mayors are practically chosen by the central government. Señor Concha, in his thesis already cited on the *regimen local*, declares that the executive power, armed with the ample prerogatives of the law, directs local administration in a manner truly absolute. He goes on to say:

> But to find the complete absence of liberty in these organisms it is only necessary to study their attributions of an economic character. While the councils are invested with the power of voting their annual budget, establishing excise taxes, giving employment, receiving bids and making contracts, authorizing loans and emitting bonds, none of these acts acquire

a definite legal value unless they have been sanctioned in some cases by the *junta departamental*, but in most cases by the government itself.[11]

Señor Humberto Fernández Dávila in a series of articles published in *La Prensa* of Lima during the summer of 1924 under the title of "El Regimen Local de la Ciudad de Lima y su Reforma," had this to say regarding municipal autonomy:

> Municipal liberty is the base and foundation of public liberty. . . . The situation that existed in our country until very recently in the relations between the executive power and the municipality reached the limits of abnormality and contradiction with the basic principles of all communal organization.[12]

Apparently the central government has seen the need of granting more local autonomy, for article 142 of the new constitution declares that "the provincial councils are autonomous in the management of those interests intrusted to them." However, the next sentence is a serious restriction: "the imposing of excise taxes must be approved by the government." Another important step both towards greater local autonomy and increased revenues was the law of March 14, 1921, which suppressed the *juntas departamentales* and turned over all departmental revenues to the municipalities except those designated by special laws to carry out specific public services. As far as could be discovered, this change met with almost unanimous approval.

These two radical changes render practically imperative a new organic law for municipal government. However, at the present moment, the question is to a certain extent linked up with the question of decentralization. If the regional congresses prove to be a complete failure, the next logical attempt for greater decentralization would seem to be by granting greater powers and increased revenues to the municipalities on the one hand, and more administrative autonomy to the departments on the other. Therefore, even though it be conceded the organic law of municipalities of 1892 is both obsolete and inadequate, its revision may well await the final verdict on the success or failure of the regional congresses.

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[11] Carlos Concha, *op. cit.*, p. 191.

[12] *La Prensa*, Aug. 29, 1924.

CHAPTER VIII.

PARTIES AND ELECTIONS.

Peru at the present time presents the curious picture of a South American republic without political parties. The Peruvians themselves concede that such a situation is abnormal, but no one seems much worried about it. Two reasons are given for this state of affairs, depending upon the attitude which the person questioned holds towards the government. If he favors it he declares that all the old parties have become bankrupt, so that President Leguía found it necessary to build from the foundation up, and the result has been the formation of the democratic reform party. Those opposed to the government claim that President Leguía has deliberately wrecked the real parties of the nation by sending their leaders into exile and muzzling the press, and that the democratic reform party is not a party at all, but merely a mushroom growth whose life is dependent entirely upon President Leguía's control of the executive power. Whatever be the reason, the national elections of 1924, which returned Augusto Leguía as president with 287,969 votes to his opponents 155, certainly indicates that either he was the unanimous choice of the nation or that political opposition was stifled. A single day spent in any of the cities in the south of Peru would dispose of any notion that the choice was unanimous.

The criticism that the democratic reform party is merely another name for the Leguía party is hardly a valid criticism in Peru, where practically every party which has existed, excepting perhaps the civil party, has been identified with some prominent politician. The democratic party was practically the creation of Nicolás de Piérola, the constitutional party was identified with General Cáceres, the civic union party with Valcárcel, and the national union party with Gonzáles Prada. The liberal party is associated with the name of Augusto Durand and the national democratic party with that of José de la Riva Agüero. Even the civil party, the oldest and perhaps the most permanent of the political parties of Peru, was the party of Manuel Pardo. As a Peruvian writer states it:

> There is absolutism in the presidential government which rules us and a lack of effectiveness in parliament because we lack real political parties. Those which are so called possess neither definite orientation, nor standards, nor discipline. They are mere groupings about a leader whose sole watchword is to get into power.[1]

Francisco García Calderón, in his brilliantly written book on Peru, thus describes political parties in his native country:

[1] P. Davalos y Lissón, *La Primera Centura* (Lima, 1919), vol. I, p. 88.

The political parties are unstable groups, formed at the suggestion of a strong directing personality. Theoretically they promise reforms in all the phases of national activity, they possess programs and objectives, be they ambitious or feeble; but, in reality, they are divided by personal hatreds, by different traditions, by the partitions of habit. The prestige of personality was the *only* element of unity in the times of the military leaders. Then men created personal and ephemeral groups whose sole end was the rapid conquest of power. Examples of this instability of parties are found even in countries of strong political organization such as England, but there its varying evolutions obey national interests and are directed by a background of history. With us the transformations depend upon the ambitions of the leaders, the national problems are relegated to a secondary position in comparison with the immediate purposes of the parties' action.[2]

Until 1872, when Manuel Pardo was elected president, it might well be said that well-defined political parties did not exist in Peru. Up to that time the various military chiefs and their followers looked upon the presidency as the ranking position in the military hierarchy—a prize to be awarded to the military leader who was best fitted to seize and retain it. Various factions or groups from time to time were dignified with the name political parties, as for example the anti-Bolívar or liberal party led by Luna Pizarro in 1827, the conservative or absolutist party which elected Gamarra in 1829, the liberal radical party which formulated the constitution of 1856, and the conservatives, who with the support of Castilla drew up the constitution of 1860, but their organization was weak, their purposes vague, and their personnel uncertain and changing.[3]

About the year 1870 a strong sentiment of reaction arose against the constant turmoil and bitter factional strife in which the military governments were constantly embroiling the country. Men engaged in commerce or industry, lawyers, professional men of all groups, the employees of the middle classes, the artisans, seemed to have reached the conclusion at the same time that the moment had come to try out a civil government. In spite of the fact that the civilian group was divided, and two candidates offered themselves as leaders of the revolt against militarism, Manuel Toribio Ureta and Manuel Pardo, the latter was overwhelmingly victorious. President Pardo, who had been minister of the treasury in the dictatorship of Colonel Prado in 1866 and mayor of Lima in 1869, was well qualified for the task of building up a political organization which should possess both stability and permanence.[4] The position taken by the new civil party was between the ardent radicals and the inflexible conservatives. It proposed to defend the rights of property and to maintain law and

[2] F. García Calderón, *Le Pérou Contemporain* (Paris, 1907), p. 171.

[3] For a history of the early parties see articles *Historia de los Partidos* in *El Comercio*, July 17–31, 1862.

[4] For a description of the conditions which brought the civil party into existence, see the article on Manuel Pardo, by Felipe Barreda y Laos. in *El Comercio*, July 20, 1913.

order. Perhaps its most important political reform was the attempt to bring about a certain degree of administrative decentralization by the formation of the *juntas departamentales*. Francisco García Calderón, an adherent of this group, summarized the principles of the new party as follows: "A struggle against militarism, the supremacy of the civil element, and order as the base of progress."[5]

The party lost control after Pardo's term had ended, and the military element again came into power with Mariano Prado. The war of the Pacific relegated to the background all questions of internal politics, but even during this trying period a valiant effort to stem disaster was made by the civilian government of García Calderón (1881–82). It was during the war with Chile and in the difficult period of reconstruction which followed that two new parties were born. One of these was the constitutional party of General Cáceres and the other was the democrat party of Nicolás de Piérola.

General Cáceres had resisted to the very end against the harsh terms which the Chileans wished to impose as a basis for peace, and laid down his arms only after the Iglesias government had signed the treaty of Ancón. Shortly afterwards he revolted against the Iglesias government and the latter was forced to compromise by giving the power into the hands of a council of ministers jointly appointed. When popular elections were held by the council, the civilian party supported Cáceres, and he was elected. Cáceres, however, soon alienated the support of this group and established the constitutional party, whose vigorous stand against Chilean aggrandizement brought into its ranks the greater part of the military group. This party, under the leadership of Cáceres, made a valiant effort to restore the financial credit of the country and at the end of Cáceres's term it was strong enough to continue in power with Morales Bermúdez.

It is difficult to say just when Nicolás de Piérola formed the *partido democrata;* certainly he had a strong group of followers in 1879, but perhaps as good a date as any other would be January 25, 1886, when he made his famous speech exhorting his followers to abstain from voting in the presidential elections. Certain it is that from 1886 to 1890 he spent all his energies in organizing and strengthening the democrat party. The new party was the radical reform party of the day. It opposed the militaristic and chauvinistic tendencies of the constitutional party and the conservative principles of the civil party. On March 30, 1889, the democrat party published its "declaration of principles," a rather lengthy document which, like the political platforms of to-day, gave its position on all the important political questions of the day.

In the elections of 1890, the government, fearing lest the revolutionary principles of the democrat party might gain too strong a

[5] *Op. cit.*, p. 173.

hold, threw Piérola into prison. He escaped after 6 months, went to Europe, and returned again for the elections of 1894. A new party called the civic union party[6] sponsored by Marino Nicolás Valcárcel, the civil party, and the democrat party were joined in opposition, but the strongly entrenched constitutional party again won with Cáceres. The civic union party now joined with the democrat party of Piérola and started a revolution. After considerable bloodshed, Cáceres resigned and in September, 1895, Nicolás de Piérola was elected president. Once in power, the democrat party, by sound financial legislation, by wise administrative reorganization, and by the avoidance of all extremes quickly obtained the confidence of the whole country. During his administration Piérola also had the support of the civil party and at its close a coalition of the two parties easily elected Romaña president.

The alliance between the civil party and the democrat party was an unnatural one and at the close of the Romaña administration they separated. The civil party had lost considerable prestige by its policy of opportunism; one of its opponents declared that "the civil party to-day is for many the art of eating at all the tables and putting their hands in all the bags." However, under the brilliant leadership of Manuel Candamo, it appeared to be taking on a new lease of life, and in 1903 with the support of the constitutional party Candamo was elected president. Unfortunately, within a year, death robbed the civil party of its able leader, but the party was still strong enough to elect as president, José Pardo, son of the eminent founder of the civil party. Señor Pardo had been serving as minister of foreign affairs in the cabinet of President Candamo. In this election the constitutionalists were still allied to the civilists.

The combination of the civil and constitutional parties, representing as it did the military classes, the rich land-owners, and the aristocracy of Peru, became exceedingly conservative in its policies. In fact, its opponents accused it of being a bureaucratic oligarchy. The radical elements of this period were divided into three parties, of which perhaps the most extreme was the national union party of Manuel Gonzáles Prada. This was a sort of modernist, anti-clerical, socialist party whose program, according to its leader, was to be an evolution in the direction of more ample freedom for the individual; its activities were to be exerted along the lines of social reforms rather than political transformations.[7] Undoubtedly the strength of this group depended to a large degree upon the trenchant pen of Prada, and when he finally

[6] This party was called the *puente decoroso entre el Civilismo y el Pierolismo* by Gonzáles Prada.

[7] For a brilliant exposition of the aims of this party see the conference of Manuel Gonzáles Prada on "los Partidos y la Unión Nacional," which is chapter 1 of his book *Horas de Lucha* (Lima, 1908). See also Luis A. Sánchez, *Elogio de Don M. G. Prada* (Lima, 1922), pp. 40–47.

withdrew from the party in 1902 it ceased to have a real influence. The words of Señor Humberto Borga G. y Urrutia may well be used as its obituary:

> The doctrinaire work of Peruvian radicalism initiated by the brilliant writer D. Manuel Gonzáles Prada was not rich in positive results. "La Union Nacional," created by this ardent patriot, who felt with virile intensity the national misfortunes, in order to trace the constructive program of the new nationality, was principally a work of theory; it lacked the social force and adaptability necessary to transform the vehement principles into concrete facts.[8]

Another group of rather radical tendencies which opposed the conservative position of the civil and constitutional parties was the liberal party. The party was formed in 1900, when a group of the democrat party led by Augusto Durand refused to follow the government in support of Romaña as president. This party has had almost as many ups and downs as its adventurous chief. In 1904 it joined with the democrat party against the candidacy of José Pardo, but was defeated. In 1908 the party revolted against the selection of President Leguía, who was then the choice of the civil and constitutional parties, but the revolution was crushed and Durand spent 2 years in jail. He helped elect Billinghurst in 1912, but also helped depose him in 1914. The liberal party now hoped to elect Durand to the presidency, but the congress elected Benavides as provisional president and Durand was forced to flee the country. In 1915 the liberals joined with the civilists and constitutionalists and elected José Pardo a second time. About this time Durand purchased *La Prensa*, and as the editor of this powerful daily he was able to inspire new vigor in the liberal party. Until the *coup d'état* of President Leguía in 1919 the liberal party was one of the parties to be reckoned with in Peruvian politics.

The youngest of the parties with somewhat liberal tendencies is the national democratic party founded by José de la Riva Agüero in 1915. This is a sort of free-lance party of the young intellectuals. It joined with the liberals, civilists, and constitutionalists to elect José Pardo in 1915 but became one of the chief groups of opposition to Pardo's financial policy of a loan from the United States secured by the petroleum industry. The party has always stood for high ideals and a sort of nonpartisanship in politics. At the close of the Pardo régime Riva Agüero urged a convention of all parties and earnest cooperation to meet the problems which faced the country.

The last party to be established and the only one which is functioning actively to-day is the democratic reform party, which came into being after Augusto B. Leguía had taken over the presidency on July 4, 1919. According to its partisans, it is called democratic because it

[8] *El Proceso de Nuestra Democracia, Revista Universitaria*, 1920, p. 324.

wishes to establish an effective democracy, and it is called reformist because it desires to reform the institutions of Peru in accordance with the new ideas which to-day dominate the world in reference to the purposes of the state. It claims to be neither a radical party nor a conservative party but a liberal party in the true sense of the word. Its program is essentially one of economic improvement of the country. By strengthening old and establishing new industries, by inaugurating vast projects of road building, irrigation, and sanitation, its avowed purpose has been to distribute the benefits of government to all classes of citizens.

After serving 5 years, President Leguía has been reelected for another 5 years to continue his program of economic reorganization of the country. It is not within the jurisdiction of this study to pass judgment either upon the results accomplished or their manner of accomplishment. Perhaps, however, it will not be amiss to cite briefly a few sentences from the ablest and most outspoken opponent of the government and the answer returned by one of the best-known advocates of the Leguía régime.

In his now famous manifesto of June 11, 1924, entitled "The political situation and public opinion," Doctor M. V. Villarán finds the country facing a serious political dilemma.

> The question must be decided as to whether the system of temporary and alternating presidencies shall prevail, restricted by the constitution and the judicial power, controlled by the parties of opposition in a congress protected by its immunities, and checked by the press and institutions protected by the public liberties and the guaranties of the individual, or whether the country is willing to accept a system of government under long-term political dictators with bureaucratic parliaments, with the press mute, without parties of opposition, unchecked and uncontrolled.

It is Dr. Villarán's opinion that Peru is sufficiently advanced politically to be governed in accordance with the accepted principles of republican government, and that any regime which denies the freest expression of public opinion is striking at the very roots of popular government.[9]

In an open letter to Doctor Villarán, Doctor M. H. Cornejo, Peruvian minister to Paris, defending the course of the government, is inclined to question Peru's political advancement. In fact, he finds Peru endowed with all forms of culture except political. After pointing out the bankruptcy of the parties, the general discontent with the bureaucratic administration preceding July 4, 1919, and the need for a complete reorganization, he gives it as his opinion that only a strong government can give the country the peace and order required for readjustment. Furthermore, time is needed; a great reform can not be put through in a day. If there is only one party in Peru to-day

[9] Text in *El Comercio*, July 16, 1924.

it is because the people are tired of party conflicts and a policy of negation. As to political liberty, before that can be enjoyed a people must learn to discipline itself, and a dictatorship is more popular than anarchy. No one can question the program of reform already put into effect by the government in power; its continuance in power will make further progress along these lines assured. With conspiracies suppressed, normality will return, and with the return of normality will come political culture. The present régime is one of evolution; it envisages a new and better Peru for to-morrow.[10]

It would appear that after all the real question at issue is the political status of the Peruvian citizen; has he an interest in and appreciation of the problems of the body politic? But this brings us back once more to political parties, for the principal functions of political parties are to stimulate political thinking and to provide machinery to make thought effective. It is almost a self-evident truth that in a democracy there must be more than one political party, for otherwise the situation presupposes that either all the citizens think alike, which is impossible, or that many of them do not think at all, which is worse. However, in the case of Peru to-day both critic and apologist agree that the old political parties are bankrupt. In fact, Doctor Villarán concedes that Leguíaism and its methods are explainable in part because of the vacuum left by the decadent parties. For, as he says:

> The civil party has wasted its substance in the prolonged use of power. Its program has not been sufficiently renewed to place it on the level with the national progress. . . . . It has lived for a long time on its reserves and it has become weak. I do not know whether it can be rejuvenated; many of its members doubt it, and they feel themselves out of sympathy with the traditional principles and policies. The liberal party has lost its chief and finds itself attacked with paralysis. The democrat party, a mere shadow of what it formerly was, has lost its bearings and is rent with discord. The constitutional party has also been deprived of its leader and has forgotten its text. The national democratic party gives no signs of existence.[11]

The Peruvians as a nation are politically minded; the general excellence of their constitutions proves it. But political parties, to have a meaning, must have leaders who will enunciate the principles and then magnetize them with their personalities. Without that, in the cynical language of Gonzáles Prada, they are "organic fragments which agitate and cry for a brain, pieces of a serpent which palpitate, jump, and seek to join up with a head which does not exist." At the present time the democratic reform party exists because it has a head. By the same token it would appear that the future of the other parties depends primarily upon their being able to find for themselves a head.

[10] Text in *La Prensa*, Oct. 15, 1924.
[11] Manifesto in *El Comercio*, July 16, 1924.

Bound up almost inseparably with the question of political parties is the subject of election procedure. It avails little to have well-organized political parties with carefully thought out programs unless the electorate is given opportunity to register its opinion fully and freely upon these platforms at the polls. The right of suffrage must be something more than "a platonic promise inscribed in the constitution" as García Calderón has described it. One of the greatest political problems which has confronted the democracies of Latin-America, and perhaps the one which has been solved in the least satisfactory manner, is the formulation and putting into effective operation of an election law which will really register the expressed opinions of the voters. Peru has made many efforts to obtain such a law, but Peruvian citizens readily concede that while some progress has been made they have by no means reached the goal.

Up till 1896 the election procedure might almost have been termed scandalous. The people elected the election boards, the *comisiones receptoras* as they were called, directly, and as the candidates who controlled the election boards were sure to win the election, there was almost invariably an armed conflict to elect these boards. However, as the chambers always passed upon the credentials of their members, the defeated candidate usually claimed fraud and presented his claims to the congress. Thus the chambers, or rather the party in control of the chambers, was usually able to seat its own candidates. The government of Nicolás de Piérola in 1896 introduced direct open voting and enforced the constitutional requirement of the ability to read and write as a qualification for voting. The new law also provided that the election boards be appointed instead of elected. The violence was reduced, but not the fraud, and the control by the government in power was even greater than before. An even greater reform was brought about by the law of 1912 in the Billinghurst administration. By this law a new body known as the assembly of principal taxpayers elected both the provincial election boards and committees of election supervisors, and the supreme court was given the power to declare the elections invalid in certain cases. The latter innovation has proved extremely beneficial. Finally, the law of 1915 retained these improvements and introduced the practice of using the military register as the electoral register.[12]

The national elections in Peru are now regulated by the law of January 28, 1924, known as law No. 4907. Until the new constitution was put into effect the law of February 4, 1915 governed, but owing to the changes introduced both by the decree of June 14, 1919 regulating elections, and the constitution of 1920, it was found advisable to draw up an entirely new law. The first part of the law covers the

[12] For an interesting study of the subject, see M. V. Villarán, *Costumbres Electorales*, *Mercurio Peruano*, vol. I,, p. 11.

question of suffrage—as to who has the right and how it is exercised, the rest of the law is devoted to the organization and procedure of elections.

The constitutional provisions devoted to suffrage and election procedure are practically confined to articles 66 and 67. Article 66 declares that active citizens who know how to read and write enjoy the right of suffrage, but that no citizen may exercise the right of suffrage, or be elected president of the republic, senator, or deputy, unless he shall be inscribed in the military register. Article 67 lays down three general bases for the exercise of the suffrage in elections: (1) inscription in a permanent register; (2) direct popular vote; (3) jurisdiction of the judicial power as the law shall determine for the guaranty of the electoral procedure, the supreme court having power to take cognizance of proceedings and to impose the responsibilities for which there may be cause in the cases covered by the law. The election law of 1924 completes and amplifies these provisions.

In order to exercise the right of suffrage, one must be a Peruvian either by birth or naturalization, be 21 years of age, and know how to read and write. Merely knowing how to sign the name does not meet the requirement for writing. Enrollment in the military register is also required as an indispensable qualification for voting. As an evidence of such registration the voter must first present himself before the board of elections with his conscription book or a card of exemption.

Not only must these qualifications be met by the voter, but he must also escape a rather large group of disqualifications imposed by the constitution and the laws. No person may vote who exercises political, military, or police authority or is in active military service. Justices, solicitors, judges of the first instance, fiscal agents, and even temporary judges of the first instance are disqualified. Either the loss or suspension of citizenship prevents the exercise of the suffrage. Citizenship is suspended in the case of those incapable of exercising it intelligently, such as the insane and the mentally incompetent, and also for those arrested or being tried for a serious crime, and for those who have been condemned and are serving sentence in some public institution. All women are excluded from the suffrage, and there is no indication that they wish to exercise it. Some idea of the relatively small number exercising the suffrage in comparison with the population of the country may be had from the results of the last presidential election. With a population estimated at over 5,000,000, the total vote cast was not much over 250,000 (288,124 in exact figures). In other words, only about 5 per cent of the total population exercised the privilege of voting.

Both the constitution and the law prescribe that the voting shall be public and direct. The election of president, senators, deputies,

and regional representatives occurs at the same time, but each vote is cast upon a separate ballot and placed in a different urn. All voting is done on a double ballot, both parts of which are identical. On both parts of this ballot the voter must write the date and the number of his conscription book or his exemption card, then one part of the ballot signed by the president of the election board is retained by the voter, and the other part signed by the voter is left with the board. The government does not supply the ballots, nor does there seem to be any restriction upon the color or size of paper to be used. The voter is responsible for writing upon his ballot all the information necessary to make it effective. But in practice the candidates usually have printed ballots available which merely require the name and military register number of the elector. According to the new law, the national elections take place the first Sunday in July and on the following Monday. The polls open at 12 o'clock noon and close at 4 o'clock in the afternoon. Immediately at the conclusion of each day's balloting the election boards are expected to make a count of the votes.

The election boards (*comisiones receptoras*) function in the capitals of the districts. They consist of three persons, the justice of the peace, the priest, and a taxpayer named by the government. The taxpayer acts as chairman and the justice of the peace as secretary. In case of need the oldest school teacher of the district may substitute for the priest and a substitute may also serve for the justice of the peace. In each district there are as many election boards as there are justices of the peace in the district capital. In Lima there are 20 election boards, each consisting of a major taxpayer, a priest, and a school-teacher chosen according to age. The members of the board are obliged to serve under penalty of fine and imprisonment. Two members of a board constitute a quorum.

At the close of the voting it is the duty of the boards of election to prepare a report of the results, which must be signed by the members of the board and any assistants whom they may have brought in to help them. The election returns, accompanied by the votes in sealed packages, signed by the board members, must be forthwith despatched to the provincial committees of election inspectors (*juntas escrutadoras de provincia*).

The provincial committee of election inspectors consists of 4 taxpayers and the judge of the first instance of the province who acts as chairman. The 4 members are chosen in the following manner: At 12 o'clock on the Sunday following the elections an assembly of all taxpayers of the province whose annual assessments reach a certain quota—£p10 in Lima, £p2 in the capitals of the departments, and £p1 in the capitals of the provinces—meet in the town hall, with the judge of the first instance presiding. The names of all those present

are then written upon ballots and the ballots deposited in an urn by the judge. The drawing then takes place and the first 4 names drawn, unless an excuse is given for not serving, are elected to serve as the provincial council of election inspectors. The same judge who presides over the assembly also presides over the committee of inspectors.

The committee begins work immediately and its first task is to elect a delegate to the departmental committee of inspectors (*junta escrutadora departamental*). Then they canvass and check the election returns which have been sent in by the various election boards of the province. After the votes for all the candidates have been totaled, the committee sends on the votes cast for senators, together with the returns, to the departmental committee of inspectors. At the same time they make proclamation of those who have been elected deputies and representatives to the regional congresses. As a proof of election, they issue credentials consisting of a report of the count of the vote and a copy of the proclamation of election. These credentials are issued in triplicate form, one copy going to the deputy elected, one to the secretary of the chamber of deputies, and the third to the minister of government. As regards the vote cast for president, the provincial committee of election inspectors makes a canvass of the votes cast for each candidate and then sends a report of the tally together with the votes in sealed packages to the secretary of the congress.

The departmental committees of inspectors are composed of the eldest judge of the first instance of the departmental capital, who presides, and of the delegates elected by each one of the provincial committees. They canvass, check, and report on the vote for senators in exactly the same manner as the provincial committee does for deputies. The credentials for senators are also issued in triplicate form and sent in the same fashion. In both the provincial and departmental committees a majority of the members constitute a quorum, and it is permissible for candidates to send representatives to both groups.

When the committees of inspectors fail to issue credentials of election after the election has been held, the interested parties, after making a deposit of £p100, may bring the case before the supreme court in order to decide upon the validity of the election and who was elected. As already noted, both the chamber of deputies and the senate, in their 30-day preliminary sessions, act as a sort of committee on credentials. Before these sessions any candidate or member of a committee of inspection may demand the nullification of the election on the ground that the proclamation made by the committee of inspectors was not in accordance with the majority of the votes cast, or on the ground that the candidate elected does not possess the constitutional requirements.

If we compare the election law of 1924 with the law of 1915, which it superseded, the outstanding difference noted is in the method of choosing the election boards. Where formerly the provincial assembly of taxpayers elected a suffrage committee which in turn named the election boards, the new law gives the government the right to pick the chairman of the boards, while the other two members are sort of ex-officio members. It can be seen at a glance that under this arrangement the government possesses absolute control over the elections. The chairman of the election board is the important personage, and as it is this board which receives, tallies, and reports the ballots, the success or failure of the law would seem to depend upon the fairness and honesty of these boards in making the returns. An investigation into the actual working of the law seemed to indicate that it availed the opponents of the government very little to go to the polls, as their ballots were rarely counted; at least, the impression that this was the case so strongly prevailed that undoubtedly it kept a large number of opponents of the government away from the polls. The political unanimity of the presidential vote would seem to bear out the assertion often made to the writer, that voting in Peru has almost become a useless function; if the voter is against the government his vote will not be counted, if he is for the government it will be counted anyway. Whether the conditions are as bad as this or not matters little if the voters think they are and act accordingly.

However, even if this situation existed in regard to the votes cast for the president, the large number of contested elections brought before the senate and the chamber in their preliminary sessions after the last election would indicate that in the case of senators and deputies the opinion of the electorate counted for something. But here again the advantage is overwhelming with the party in power to seat members of their own political faith, regardless of the merits of the case.

It has already been noted that open rather than secret voting is the rule. At the present time, when the Australian ballot in its original or modified forms has found such almost universal favor, it might be worth while to estimate its effect if used with the present election law of Peru. If the ballots were furnished by the government and the voting done in secret, and each candidate allowed to have a representative in the polling booths during the marking and counting of the ballots, it is hard to see why even with the election boards constituted as they now are the electorate could not give a free expression of its opinion. If the representatives of the candidates were also permitted to challenge all voters against whom they had proof of disqualification the military register would then more accurately represent an electoral register.

Even the electoral jurisdiction of the supreme court, which has been called "the lifeboat which has saved popular suffrage from drowning

in the agitated sea of popular passions," finds itself more restricted in the new law. It would appear, then that if the principal function of an election law is to furnish the machinery for the freest expression of the opinion of the electorate, the law of 1924 does not seem to be as well suited for the purpose as the law of 1915. However if García Calderón is correct in his chapter on the future of Peru, when he says that "we must go to democracy through oligarchy," perhaps the present government may justifiably claim that oligarchy having failed, we must now go to democracy through autocracy. If this be conceded, the present law may be just what is needed for the period of transition.

CHAPTER IX.

CONCLUSIONS.

Since Woodrow Wilson characterized the world war as a struggle to make the world safe for democracy, the word democracy, like charity, has been made to cover a multitude of sins. In fact, the term has been so used and abused that even a political spellbinder hesitates to use the word too frequently. When Russia under the soviet regime, and Italy under the fascisti, and Britain under the labor government, are all cited as representative types of the democratic form of government, the term democracy ceases to have much value as a definition. But when the 20 Latin-American republics are added, and also receive the same classification as democracies, the word ceases to have any real meaning whatsoever as to defining the form of government. Yet, in spite of the fact that there has been anarchy in Haiti, tyranny in Paraguay, monarchy in Brazil, oligarchy in Chile, and despotism in Venezuela, there is a real reason for speaking of the democracies of Latin-America; for no matter what the form of government may be in fact, the democratic ideal is always in the background, and, what is even more important, the struggle to reach it is constant and unceasing.

In the study of the government of Peru this fact stands out with particular emphasis. Peru has lived under the dictatorship of San Martín and Bolívar, the benevolent despotism of Santa Cruz, and the military autocracy of Castilla, and yet during all these regimes democratic constitutions existed and were not entirely without influence. The difference beween the theory and facts of government may easily be overemphasized. The Peruvians did not have the training in the operation of constitutional government which practically all the 13 North American colonies had received, and the constitution of the state must be regarded almost as much the theoretical ideal of government to be reached ultimately, as the organic law of the state actually in force.

If such an explanation be accepted as reasonable, we can find reason for an optimistic outlook on the political development of Peru both from the standpoint of theory and fact. Casting a glance backward over the constitutional progress of the state, it must be conceded that it has been steady and substantial. The constitution of 1860 was undoubtedly the most perfect instrument of government which served the Peruvian state as organic law until that time. In fact, it was so well drawn that it required very few changes in the course of 60

years, and with a few modifications it would differ little from the constitution now in force. Therefore, taking the constitution as the theoretical ideal of the government, as well as its organic law, it must be agreed that Peru's progress has been in the direction of a highly perfected instrument of government and that the advance has been consistent.

Now turning towards government as an actual condition and not a theory, we again find reason for optimism. From Bolívar's government to that of Castilla, a period of less than 20 years (1826 to 1845), there were exactly a dozen changes of administration, 5 of them in the last 4 years. Except for comparatively stable periods under Gamarra, the government was almost a steady régime of revolutions. But in the next 27 years we note a considerable degree of tranquillity, with only 6 different men holding the executive power. This was a step forward in the science of practical government. But on the other hand, presidents were all military leaders, and the enforcement of the constitution was always somewhat dependent upon the exigencies of the occasion. Beginning with Manuel Pardo in 1872, we have a civilian government which tried to work within the constitutional limitations. The war of the Pacific, as might be expected, brought a slight setback to constitutional government, but from Piérola's term in 1895, until Leguía's second term beginning in 1919, we find real constitutional government in Peru. The present period is another period of transition, the industrialization period of the country. When the country has become stabilized under the new conditions, there is every reason to hope that the principles of the constitution and the practices of the government will again be brought into alignment.

At this point the question might be raised as to the advisability of formulating an organic law for the state which, while sound in theory, is so perfect that there can be little hope that the government in operation will be able to measure up to its standards. Instead of writing the ideal constitution for the perfect democracy, and then working towards an approximation of its specifications, might it not be simpler and wiser to write an organic law very little in advance of the political methods and practices which custom has already sanctioned in the country? In other words, is it wise to have a large gap between the constitutional principles of the state and the practical politics? Is the idea of a constitution as a goal to be reached as useful to the state as a practical working organic law based primarily upon practices already sanctioned by custom and experience?

To make the case concrete, was it advisable for the makers of the constitution of 1920 to attempt to incorporate in the new organic law a sort of parliamentary system of government, when all the customs, practices, and tendencies of the country make for a strong presidential

type? Was it the part of wisdom to write into the constitution that principle of individual liberty known as "the writ of *habeas corpus*," when it must have been appreciated that such a safeguard, at the time, would be merely an empty phrase in all cases of political arrest or seizure? Is it not possible that by establishing an impossibly high standard, the very realization that it can not be reached may break down the desire to reach any standards whatsoever?

If Peru were an Anglo-Saxon country there would be little doubt about the answer. The violation of any law with impunity has a notable tendency to provoke the violation of all law; but in the Latin-American countries an entirely different outlook upon the law exists. All laws seem to be divided into two classes, those which are enforced and those which are not. The mere fact that one law is not enforced in no way interferes with the respect which the citizens have for those which are. For instance, the regulation against smoking in the street-cars of the suburbs of Lima, regularly posted in a conspicuous place, receives no attention whatsoever, while the regulation against riding on the front platform, except when there are crowds, is quite regularly observed. A distinction between the letter and spirit of law enforcement also seems to exist without detracting from the respect for the law. One night a friend and the writer went to a restaurant and found the door closed. A policeman standing in front explained that all restaurants selling liquors had to close at 2 a. m. But, he added, they were still serving, and that if we knocked on the door they would let us in. He was even gracious enough to knock on the door for us. Under these circumstances it would be decidedly rash to criticize too severely the discrepancy between theory and practice, particularly when a tendency is evident to try and raise the practice to the plane of theory.

But a more serious situation still remains to be considered. It is not so difficult to explain the non-enforcement of certain laws; there is probably not a country in the world where there are not some dead-letter laws upon the statute books; but how about the case where the government itself violates flagrantly the provisions of the very constitution which it was instrumental in having adopted? Or, to consider the cases which are constantly being cited against the present government of Peru, the persistent seizure, imprisonment, and deportation of political suspects with utter disregard of the individual guaranties of the constitution such as no arrests without judicial warrant, no deportation without judicial sentence, and the right to invoke the writ of *habeas corpus*. The government itself makes no attempt to deny these allegations, but it does attempt to justify them. Its argument runs something like this: Surely the constitution does not tie the hands of the government in putting down revolutions? Does not the constitution give the president the power to maintain order

in the republic? But what is the public order? For the opposition the public order ought to be the free exercise of the individual liberties; but for the government the public order consists in the equilibrium between the liberties of the governed and the authority of the government. Every time, then, that the governed exercise their liberties against the authority of those governing, the equilibrium is disturbed and the public order interfered with. It becomes then the duty of the executive, in accordance with the constitution, to prevent this disturbance.

But, answer the opponents, true enough the constitution does give the executive the right to maintain public order in the state, but it also says that he must do it in accordance with the constitution and the laws.

The prudent politician, explains the supporter of the government, accepts an innovation, even though it may be in violation of formal law from the moment that it is indispensable to the existence or to the progress of the state. He is obliged to do so because the force of events is more powerful than the authority of any article of the constitution. He ought to do so because his duty to protect the life of the nation must take precedence over the respect for legal formula. To endure evil, to suffer with patience, to sacrifice oneself may be the supreme perfection in religion, but politics holds its eyes fixed on action, on results, on progress. A doctrinaire who forgets it through scruples of legality is as much to blame as the revolutionary innovator who places himself arbitrarily above the laws.[1]

This political philosophy is by no means new. Machiavelli in "The Prince" argues very effectively in favor of it. The Bourbons in France, the Stuarts in England, and the Hohenzollerns in Germany were ardent disciples of it. Roosevelt, in obtaining the treaty which made the Panama Canal possible, has been accused of employing it. And it must be conceded that when such a policy brings results it is extremely popular. Bismarck was none the less popular when he violated the German constitution. Particularly is this true in the Latin-American countries, where a strong personality is always popular, and where the constitutions are rarely old enough to challenge that respect due to long-established institutions. But, as we have seen in Peru, there is now less tendency to write a new constitution with each change of government. The constitution of 1860 lasted 60 years, and three-fourths of it still lives in the present constitution. It may be argued too that Peru, after all, is still a young state, and should not be too harshly criticized if, in its present era of industrial expansion and commercial progress, constitutional restrictions count for little when they seem to stand in the way of what appear to be more material benefits.

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[1] This is a brief paraphrase of an editorial in the government organ *La Prensa*, July 23, 1924, in answer to the manifesto of Dr. M. V. Villarán.

One of the factors most closely bound up with the constitutional development of Peru is the position of the chief executive. We have already seen that the importance of this position is not so much due to the constitutional grant of power as to the prestige of the office and the position of authority which custom has ascribed to it. Enjoying as he does these extra legal sources of authority, the president seems bound to dominate any political situation that arises, no matter what constitutional restrictions are thrown about him. This will certainly continue to be true until the political parties become strong enough to make the candidates for president somewhat dependent upon their organization to gain the election, instead of being merely the tail to the presidential kite as they now are. The present constitution makes a valiant effort to check and control the power of the executive by attempting to make him more dependent upon the congress. The method is effective in countries where there is a public opinion alert and interested in political matters and where this opinion is able to make itself felt at the polls. But without fairly well organized parties to stimulate public opinion and without an election law so administered as to make the opinion effective, the executive is bound to remain the unchallenged captain of the ship of state.

But is this an unfortunate situation after all? Is an autocratic or dictatorial type of government an unmitigated calamity? No other type can protect the state abroad more effectively, and such a government can usually maintain peace at home. It is generally conceded to be the most efficient of all governments. Responsibility is fixed and evident. If such a system works for the best interests of the state without interfering with the commonly accepted rights of the individual, it is the closest approach to the ideal government. The rule of a Louis XIV or Henry VIII, just as those of a Clemenceau or a Lloyd George, are not regarded as periods of failure in a nation's history. Washington was looked upon as a dictator, Lincoln violated the constitution, Roosevelt laughed at congress when it opposed his wishes, and Wilson was conceded to be the absolute ruler of the United States. Peru's history furnishes similar examples. The periods of Gamarra, Castilla, and Piérola stand out primarily because these particular men were the real heads of the government—men who not only had ideas which were worth while, but also had the power to put their ideas into operation.

Inasmuch as the administration of President Leguía is generally agreed to be a one-man government, let us try in a strictly unbiased manner to marshal its faults and benefits and then try to form some estimate of its value to Peru.

First let us enumerate the accusations brought against it. The rights of many individuals have been ruthlessly violated; many of the ablest citizens have been imprisoned on the island of San Lorenzo

or deported and forced to live a life of exile. In practically all these cases the constitutional requirement of a judicial trial and the right to appeal for a writ of *habeas corpus* has been completely disregarded. The press has been completely muzzled, the government seizing one of the principal newspapers of the opposition and turning it into a government organ. Even the freedom of speech has been practically eliminated, owing to an elaborate spy system and the system of imprisonment and deportation without trial. When an article of the new constitution prevented a second consecutive term, the government saw to it that the constitution was amended. When the day of election dawned, the principal candidate of the opposition had been deported and the government had the field free. It was not even worth while for the opponents of the government to go to the polls. The interests of the rest of the country have not been given sufficient attention in the government's effort to make Lima the worthy capital of a greater Peru. Too much reliance has been placed upon foreign methods for the improvement of national institutions, e. g., the French military mission, the American naval mission, the Spanish police system, the English postal and telegraph system, and the American customs control. The ministers have become mere pages of the president, and the legislative body merely ratifies the government's orders. And finally, and perhaps what is most important of all, the system of real constitutional government inaugurated by Piérola, and carried along by Romaña, Candamo, and Pardo, has been completely destroyed and Peru has reverted to the despotic system of the *caudillo*.

By way of reply, the supporters of the government declare that the Leguía regime has been one of peace, progress, and prosperity. Never in any former administration has the country made such rapid advances in trade and industry. Peru has long been known to be a land of great natural resources and wealth, but not until the present government came into power was a real effort made to develop these resources for the benefit of Peru. The great mineral wealth has never before been exploited on so vast a scale or so advantageously to the country. The total annual production value has reached a figure well over $60,000,000, and to-day Peru stands first in the world in the production of vanadium, third in the production of silver, sixth in the production of copper, and eighth in the production of petroleum. Agricultural production has been encouraged and stimulated in every way, and vast new areas rendered possible for cultivation through new irrigation projects. The great project for the irrigation of the *Pampas del Imperial* already completed will open up more than 7,000 hectares (about 17,500 acres) of fertile soil almost at the doors of Lima. The project for irrigating the *Pampas de Olmos* between the departments of Piura and Lambayeque will provide an area of about 50,000 hectares (about 125,000 acres) for cultivation. Con-

tinuous efforts have been made to increase and improve means of communication and transportation. Railway mileage has been substantially increased and new and important automobile roads opened. The new concrete highway known as the *Avenida del Progreso,* linking Lima with Callao, will save the country more than 4,000,000 soles annually (almost $2,000,000) in transportation costs.

Nor has the government limited itself to the stimulation of production and construction. Improvements and economies have been inaugurated in the public services. A national reserve bank has been established which has proved of vital benefit to business and credit, the annual deficits in the postal service have been changed to profits, and notable improvements have been made in the organization of the army, navy, and police. The new constitution promulgated by the Leguía government has attempted to introduce many social and economic reforms, and the new penal code makes effective the standards of justice of the most highly civilized states. In a word, a social, economic, and industrial revolution has been brought about in Peru and its sponsors feel that the benefits obtained and the results achieved more than compensate for the few fissures made in the constitutional foundation of the state.

One of the factors which has aided to some extent in bringing about the present supremacy of the executive has been the change in the method of the election of the legislative body. With the whole senate elected at one time simultaneously with the chamber and for an equal term, it can be readily seen that the government has a much better opportunity to control the legislative body than under the former system. The power of any party or parties in opposition is considerably weakened, and the upper house loses to some extent its conservatism and tendencies to check the lower house. It is too soon to determine what effect this change will have upon the political development other than strengthening the hands of the government in power, but it should be noted that the system is contrary to the generally accepted bases for the organization of second chambers.

The attempt of the new constitution to approach the parliamentary system of government seems destined to failure. There is no question of the advantages of such a system, but to function effectively there must be an electorate well trained politically which will register public opinion at the polls. Well-organized parties are an essential foundation of such a system. But undoubtedly the factor that militates most strongly against the success of the parliamentary system in Peru is the strongly intrenched prestige and authority of the president. The historical tradition established by the *virreyes* and *caudillos,* the habit and custom of the people to-day to expect that the executive will exercise all the powers of the state, the strategic position which

the president holds in regard to the political parties, makes it practically impossible to give the legislative body that power over the executive which the parliamentary system requires.

As to the administration of justice in Peru, the principal criticism is that it is slow and expensive, but there are few countries where such a charge can not be made. The supreme court is honored and respected in Peru on account of the high character of its personnel and because of the fact that it has little connection with politics. The superior courts also are well organized and the judges on the whole well qualified for the work. The weakness of the system seems to be in the judges of the first instance and the justices of the peace. Often these men are mere political henchmen qualified neither by character nor training for the positions which they hold. But fortunately, their jurisdiction is quite limited and any important case may be appealed to a higher tribunal. The law itself is largely codified, and except for the civil code upon which a committee of jurists is now working, all of the codes have been revised to bring them into line with present-day accepted principles of justice.

Although the scope of this work is limited to the study of the organization and functioning of the government of Peru, it will hardly be diverging too far from the path to mention some of the principal problems which the government is facing. An outstanding foreign question is the settlement of the Tacna-Arica dispute with Chile. Perhaps the three most important domestic questions are the formulation of a wise and adequate Indian policy and the solution of the transportation and irrigation problems.

The Tacna-Arica question must be settled not only for the good of Peru, but for the interests of all South America. It was most unfortunate that a definite permanent territorial settlement was not reached in the treaty of Ancón, which concluded the war of the Pacific. The plebiscite clause has left an open wound which time alone can heal. It is only fair to Peru to state that she has made a number of efforts to reach a settlement. Even the Chilean publicist, Augustín Ross, conceded that the plebiscite has not taken place because Chile has not wished it.[2] But at the present time the question seems closer to a settlement than ever before. At the invitation of President Harding, representatives of Peru and Chile met in Washington in May 1922, and agreed to allow the President of the United States to arbitrate the dispute. On July 20 of the same year the protocol was signed by which the president of the United States was to decide (1) whether or not the plebiscite should be held; (2) if held, what should be the conditions; (3) if not, the two powers to discuss the new situation arising; (4) in case then no agreement is reached, the two governments will invoke the good offices of the United States. The Peruvian case

[2] *The Question of the Pacific* (Paris, 1919), p. 37.

was submitted on November 13, 1923, and the Chilean answer on April 13, 1924. President Coolidge, who accepted the position as arbritrator upon the death of President Harding, handed down his decision on March 4, 1925. Although taking cognizance of the persecution and expulsion of Peruvian citizens in the region under dispute and although "the arbitrator is far from approving the course of Chilean administration and condoning the acts committed against Peruvians . . . the arbitrator holds that the provisions of the second and third paragraphs of article 3 of the treaty of Ancón are still in effect; that the plebiscite should be held; and that the interests of both parties can be properly safeguarded by establishing suitable conditions therefor."[3] Inasmuch as the arbitrator was further empowered to determine the conditions under which the plebiscite should be held if it should be declared in order, he held that all male persons, 21 years old, able to read and write, and who were born in Tacna or Arica or who had resided there 2 years continuously on July 20, 1922, should be entitled to vote, provided that such persons had held no military, political, judicial, or fiscal office in the service of either country. A plebiscitary commission consisting of three members, one to be appointed by Chile, one by Peru, and the third member, who shall act as president of the commission to be appointed by the president of the United States, is given complete control over the plebiscite with power to promulgate rules and regulations.

Upon the announcement of the award there was an indignant outburst of popular protest in Peru which threatened the government itself. But order was quickly restored and at the present writing it seems as though the Peruvian government will loyally carry out the award. The appointment of General Pershing as the American member of the commission should insure the most rigid fairness in the taking of the plebiscite.

First among the internal problems of Peru is the formulation and execution of a policy of protection and amelioration of conditions of the indigenous race. There are no exact figures obtainable as to the racial population of Peru, inasmuch as the last census, that of 1876, was made wholly upon a territorial basis. Various estimates however, have been made, that of Doctor Carlos Wiesse dividing the population as follows: 50 per cent pure Indian; 32.5 per cent of mixed blood; 15 per cent white; 2.5 per cent negro. Other estimates give as high as 80 per cent for the pure Indian stock out of a total population of approximately 4,000,000. No matter what figures are taken, it is evident enough that any country whose ruling class numbers but 15 per cent of the total population must give serious consideration to its treatment of the subordinate groups. The three principal enemies of the Indian have been called the politician, the landowner, and the

[3] *Opinion and Award of the Arbitrator* (Washington, 1925), p. 36.

priest. The Indian has been taxed unjustly, exploited unmercifully, and very often despoiled of his lands. The law for obligatory military service is so administered that the whole rank and file of the army is composed of Indians. Little effort has been made to train him outside of the army, and he is often little more than a beast of burden.[4]

The governments of Peru in recent years have appreciated the importance of the problem. The first steps taken were to protect the Indian from injustice and exploitation. The government is now attempting also to improve conditions by educational means, particularly working through that part of the Indian population enrolled in the army. In addition to the regular schools available to the Indians, in 1914 a school for Indian boys was authorized in Puno to teach the rudiments of education and practical farming. The results of this school have been eminently successful. Laws have also been passed to prevent the Indian from being despoiled of his land and to compel the payment of a minimum wage in cash as well as a part in commodities. In 1921 an executive decree created a bureau of Indian affairs in the department of development which was to guarantee the person and property of the Indians. In 1923 another executive decree made the municipal councils responsible for fixing annually in their first session a minimum daily wage for the Indian agricultural and pastoral laborers within their jurisdiction. Although pitifully little has been done compared with the vast needs, at least a start in the right direction has been made.

P. Dávalos y Lissón, in his review of the progress made by Peru in the first century of her independence, says.

> Nothing has contributed so much to the moral and material backwardness of Peru as the lack of means of communication. . . . Since, lacking railways, we have not constructed highways nor improved the poor roads, narrow and dangerous, which are called horseshoe ways, the social and political life of the nation is little different from that of colonial times. The villages and towns are completely isolated the one from the other. Their inhabitants having no facilities for traveling, never get acquainted with the rest of the nation in which they live. This brings about a rank provincialism and an insupportable political bossism.[5]

Anyone who has traveled from Lima to Oroya, or from Mollendo to Arequipa, will readily appreciate why Peru possesses scarcely 2,000 miles of railroads. The cost of construction is extremely high, the population small and scattered, and the natural difficulties to be overcome are tremendous. The Southern Railway, which runs from Mollendo to Puno and Cuzco, and which is being extended to Santa Ana, is the longest system. The Central Railway, running from Callao to Huancayo, is the second longest. There are a half-dozen other very short lines running from the coast inland, which

[4] For an interesting study of the whole question see Pedro Yrigoyen, *El Conflicto y el Problema Indígena* (Lima, 1922).

[5] *La Primera Centuria*, vol. 1, p. 369 ff.

complete the system. All transportation from north to south is by ocean transportation, and in this respect Peru is well served. Four steamship lines give regular service to practically all the important Peruvian ports: the Peruvian Line, the Grace Line, the Pacific Steam Navigation Company, and the South American Steamship Line. A number of others call from time to time.

Realizing the pressing need for increased railway mileage, the Leguía administration has in view an extensive program of railway construction. It is proposed to complete the railway from Huancayo to Ayacucho and then build the long stretch from Ayacucho to Cuzco. Another road will run from Chimbote Tambo del Sol and thence on to the Ucayali River, thus bridging the gap between the coast and the interior. Lines are to be constructed from Lima to Pisco and from Pisco to Huancavelica. Finally, a line from Chuquicara to Jaén, passing through Cajamarca and Chota, will open up the rich mining regions of the north. In addition to this elaborate scheme of railway development, the Leguía administration has also begun upon an extensive program of road-building in all parts of the country. Thus the automobile is also being utilized to meet the transportation needs of the country. The economic improvement which better transportation facilities is bound to bring about in the country will unquestionably also make for better political conditions. Improved means of communication invariably reduce provincialism and tend to encourage a community of interests.

Better transportation facilities would stimulate both mining and agriculture in Peru, but for the latter increased means of irrigation are even more necessary. Peru is divided into three parts: the Pacific coastal plains, the *sierra* or mountain region, and the *montaña* or forest region which faces the Atlantic. In the latter region rain is abundant and there is an extremely luxuriant vegetation, but at the present time this vast section of Peru is little more than a tropical jungle, and the agricultural needs of the country are practically dependent upon the coastal plains, but as rainfall is very slight only the river valleys and the artificially irrigated sections are productive. The lands along the coast are extremely fertile and it is only necessary to bring down the waters from the adjacent mountains to rival the agricultural development of California.

Since 1904 a corps of engineers under the ministry of development has been investigating and working out projects for irrigation, and in a report made in 1915 it was estimated that more than 100,000 hectares of ground could be irrigated at an estimated expense of £4,250,000. Irrigation projects have been initiated and carried out almost continually by the recent administrations in Peru, but only a beginning has been made. We have mentioned the two most recent projects—the Imperial, which has been called the second Cañete,

and the Olmos, sometimes named the Peruvian Mesopotamia. The production of sugar, cotton, and rice of the finest quality and on a vast scale in Peru requires water alone. The climate and soil are at hand.

Other problems might be mentioned, such as the need of the proper sort of immigration for colonization purposes and the crying necessity for better sanitation facilities for practically all the cities outside of Lima. But these problems are now being faced and solved by the government in as prompt and effective a fashion as possible. In fact, in every question of internal improvement and development the Leguía administration deserves the greatest credit for its truly remarkable accomplishments.

It only remains for Peru to solve the more difficult and less tangible governmental problems which are political. No state can be successful in the twentieth century without stability of government. The financial, commercial, and economic foundations of the state are quite as important as the political, and they crumble much more quickly during periods of instability and revolution; and what is even more important to note, they are much more difficult to rebuild and the work is bound to be extremely slow. Peru at the present time does possess stability of government. As a result, its financial and economic situation is excellent. Its industrial development has barely begun, but it has vast potentialities. A prosperous state is easily governed. As we have seen, Peru possesses an instrument of government which theoretically is all that can be desired. For more than a century now it has also had the invaluable training of experience in facing political problems. If only the same spirit of energy and cooperation will be shown in trying to solve the political problems of the country, as has recently been shown along economic lines, there is every reason to hope for success in the governmental system of Peru.

BIBLIOGRAPHY.

WORKS CONSULTED IN THE PREPARATION OF THIS VOLUME.

Documents.

Anales Judiciales de la Corte Suprema de justicia, (Lima, 1906).
Anuario de la Legislación Peruana, (Lima, ——).
Collección de leyes, decretos y ordenes publicadas en el Perú desde su independencia hasta—8 vols. (Lima, 1831).
Diario de los Debates de la Asamblea Nacional de 1919, 2 vols. (Lima, 1920.)
Diario de los Debates, Cámara de Diputados. (Lima, ——.)
Diario de los Debates, Cámara de Senadores. (Lima, ——.)
Diario de los Debates de las Sesiones de Congreso. (Lima, ——.)
El Peruano, Diario Oficial. (Lima, ——.)
Exposición de motivos del Codigo de procedemientos civilas formulada por el Comité de reforma procesal. (Lima, 1912.)
Ministerio de relaciones exteriores. Exposición documentada sobre el estado actual del problema del Pacífico. (Lima, 1921.)
Resumen del censo général de habitantes del Perú hecho en 1876. (Lima, 1878.)
Statistical Abstract of Peru, 1920. (Lima 1921, Dirreccion de Estadística.)

Books and Pamphlets.

Ayarza, Victor E. Reseña Histórica del Senado del Perú, 1821–1921 (Lima, 1921)
Bryce, James. South America; Observations and Impressions. (New York, 1916).
Caivano T. *Historia de la guerra de América entre Chile, Perú y Bolivia*, 3 vols. (Lima, 1901–1904).
Calderón, E. García. Constitución, Codigos, Leyes del Perú. (Lima, 1923.)
Calderón, Francisco García. Le Pérou Contemporain (Paris, 1907).
Camino. Programa de Derecho Procesal (Lima 1919).
Castro, P. Fuentes. Codigo de Justicia Militar (Lima, 1899).
Dávalos y Lissón, P. La Primera Centuria, 2 Vols., (Lima, 1919).
Fodéré, Pradier. Compendio del Curso de Derecho Administrativo, (Lima, 1878).
Fuentes, M. A. Derecho Constitucional Universal (Lima, 1874).
———. La constitución y leyes organicas del Perú dadas por el Congreso de 1860, comparadas con las que sancionó la Convención nacional de 1855 (Lima, 1861).
Grasserie, Raoul de la. Code Civil Peruvien (Paris, 1896).
James, H. G., and P. A. Martin. The Republics of Latin-America (New York, 1923).
Lavalle, J. B. de. El Perú y la grande guerra (Lima, 1919).
Lama, A. M. de la. Codigo de Commercio del Perú (Lima, 1902).
Léon y Léon F. Tratado de Derecho Administrativo (Lima, 1897).
Loredo, A. Benavedes. Bosquejo sobre la evolución política y jurídica de la época Republicana del Perú (Lima, 1918).
Lorente, Sebastián. Historia del Perú desde la Proclamation de la Independencia (Lima, 1876).
Markham, Clements R. History of Peru (Chicago, 1892).
Maúrtua, V. M. The Question of the Pacific (New York. 192–?).
Olaechea, G. V. La Constitución del Perú y Leyes Organicas (Lima, 1922).
Olivo, Juan F. Constituciones Políticas del Perú (Lima, 1922).
Pardo, José. Four Years of Constitutional Government (New York, 1920).
Paz Soldan, M. F. Historia del Perú Independiente (Lima, 1868).
Patrón, Enrique. Leyes, Decretos, Resoluciones vigentes en el Ramo de Justicia (Lima, 1901).
Prada, Manuel Gonzáles. Horas de Lucha (Lima, 1908).
Romero, J. G. Estudios de Legislación Procesal (Lima, 1914).
Rosa Toro, D. Augustin de la. Historia política del Perú. (Lima, ——).
Ross, Augustín. The Question of the Pacific (Paris, 1919).
Rowe, L. S. Early Effects of the War upon the Finance, Commerce and Industry of Peru (Washington, 1920).
Salazar, A. G., y Linch, J. Guia Practica para los Diplomaticos y Consules Peruanos (Lima, 1918).
Sanchez, L. A. Elogio de Don M. G. Prada (Lima, 1922).
Vargas, M. Nemesio. Historia del Perú Independiente (Lima, 1903).
Vásquez, M. M. Estudio de la Constitución Peruana (Lima, 1898).
Villarán, L. F. La Constitución Peruana (Lima, 1899).
Villarán, Manuel Vincente. Las Constituciones de 1860 y 1920 concordadas (Lima, 1920).
———. Programa Detallado de Derecho Constitucional, Part II. (Lima, 1920).
Walle, Paul. Le Pérou Economique (Paris, no date).
Yrigoyen, Pedro. El Conflicto y el Problema Indígeno (Lima, 1922).
Files of *El Comercio, La Prensa, la Revista Universitaria, Anales Universitarios*, and *El Mercurio Peruano*, were used as cited in the text.

APPENDIX.

Constitution of 1920 of the Republic of Peru.

Title I.

The Nation and the State.

Article 1. The Peruvian nation is the political association of all Peruvians.

Article 2. The nation is free and independent and may not enter into any compact which is prejudicial to its independence or integrity or in any manner affects its sovereignty.

Article 3. Sovereignty resides in the nation and its exercise is intrusted to the authorities established by this constitution.

Article 4. The objects of the state are to maintain the independence and integrity of the nation; to guarantee the liberty and rights of the inhabitants; to preserve public order; and to further the moral, intellectual, material, and economic progress of the country.

Article 5. The nation professes the Roman Catholic Apostolic religion, and the state protects it.

Title II.

National Guaranties.

Article 6. Neither hereditary offices nor privileges nor personal immunities shall be recognized in the republic.

Article 7. Taxation may not be imposed, modified, or discontinued, except by law and for a public purpose. Only a law may grant total or partial exemption from taxation and never on personal grounds.

Article 8. The income tax shall be progressive.

Article 9. Receipts and expenditures of the nation shall be determined by law. Whoever authorizes an illegal exaction or expenditure shall be held responsible. He who executes such order is also responsible unless he can prove his innocence. The government authorities are held responsible for the immediate publication of their accounts of expenditures and budgets including those of all subordinate sections and officials.

Article 10. The constitution guarantees the payment of the public debt. Every obligation of the state incurred according to law must be met.

Article 11. No bills of credit shall be emitted as legal tender except in case of war. The state alone may coin money.

Article 12. No person may receive more than one salary or emolument from the state, no matter what office or function he may perform. Salaries or emoluments paid by local governments or by societies dependent in any manner upon the government are included in this prohibition.

Article 13. All acts performed by persons usurping public powers or holding offices conferred without complying with the requirements established by the constitution and the laws are null and void.

Article 14. Whoever exercises any public office is directly and immediately responsible for the acts performed in the exercise of his functions. The law shall determine the manner of making this responsibility effective. The public solicitors are charged with exacting compliance with the provisions of this article.

ARTICLE 15. No one may exercise any of the public powers established by this constitution without taking oath to observe it.

ARTICLE 16. Any Peruvian may lodge complaints before the congress, the executive power, or any other competent authority for violations of this constitution.

ARTICLE 17. The laws afford protection and impose equal obligations upon all. Special laws may be enacted when required by the nature of things, but not based on differences in persons.

ARTICLE 18. All persons are subject to the penal laws and to those which safeguard the public order and the security of the nation, the life of the people, and the public health.

ARTICLE 19. No one is obliged to do that which is not required by the law nor to refrain from doing that which the law does not forbid.

ARTICLE 20. No law has retroactive force or effect.

ARTICLE 21. The law protects honor and life against all unjust aggression, and the death penalty may be imposed only for the crime of murder or for treason against the nation, in the cases determined by law.

TITLE III.

INDIVIDUAL GUARANTIES.

ARTICLE 22. There are not, nor shall there be, slaves within the republic. No one may be subjected to personal labor without his free consent and without due recompense. The law recognizes no agreement or charge which restricts the freedom of the individual.

ARTICLE 23. No one may be persecuted because of his ideas or beliefs.

ARTICLE 24. No one may be arrested without written warrant of the competent justice or of the authorities charged with the preservation of public order, except *in flagrante delicto*. In any case the person arrested must be brought before the competent judge within twenty-four hours. The persons executing such a warrant are required to furnish a copy of it when requested. The person arrested or any other person may invoke the writ of *habeas corpus*, in conformity with the law, for illegal imprisonment.

ARTICLE 25. No one may be apprehended for debt.

ARTICLE 26. No declaration extorted by violence shall be held valid, nor may anyone be condemned save in accordance with pre-existing laws relating to the fact and by the tribunals established by law.

ARTICLE 27. Prisons are instruments of security, not of punishment. All severity beyond what is required for the custody of the prisoners is prohibited. The law may not establish cruel and infamous punishments. Whosoever orders or inflicts them shall be punished.

ARTICLE 28. No one may assert or defend his rights save in the manner established or authorized by law. The right of petition may be exercised individually or collectively.

ARTICLE 29. The right to enter, pass through, and leave the republic is free, under limitations established by the penal, sanitary, and immigration laws.

ARTICLE 30. No one may be expelled from the republic, nor from his place of residence, save by judicial sentence or under the law relating to foreigners.

ARTICLE 31. The domicile is inviolable. No one may enter it without first showing a warrant issued by a justice or by the authority charged with preservation of public order. The officers of enforcement of sanitary

and municipal ordinances may also enter the domicile Both are obliged to show the warrant of their authority and to furnish a copy of it when required.

ARTICLE 32. The secrecy of the mails is inviolable. Letters abstracted from the mails shall have no legal validity.

ARTICLE 33. The right to assemble peaceably in public or in private without disturbing the public order is free to all.

ARTICLE 34. Everyone may use the press for publishing writings without prior censorship, under liabilities to be fixed by law.

ARTICLE 35. These individual guaranties may not be suspended by any law or by any authority.

ARTICLE 36. In extraordinary cases, when the internal or external security of the state is threatened, the congress may enact special laws or resolutions as required for its defense. But no accused may be sentenced by special judgments, nor may such laws or resolutions violate article 35.

TITLE IV.

SOCIAL GUARANTIES.

ARTICLE 37. The nation recognizes freedom of association and of contract. Their nature and conditions shall be fixed by law.

ARTICLE 38. Private property, whether material, intellectual, literary, or artistic is inviolable. No one may be deprived of his property except for a legally proved public purpose and previously adjudged compensation. All private property is controlled exclusively by the laws of the republic and is subject to the taxes, burdens, and limitations established by them. Objects of common use like public ways and streams may not be held as private property. Entails are forbidden and all property is transferable in the manner fixed by law.

ARTICLE 39. Foreigners are placed in the same position as regards their property as are Peruvians, but in no case may they claim an exceptional status or resort to diplomatic claims. Within a distance of 50 kilometers from the frontiers foreigners may neither acquire nor possess by any title whatsoever, lands, waters, mines, or fuels, directly or indirectly, whether as individuals or associations, under pain of surrendering to the state the property so acquired, save in case of national necessity declared by special law.

ARTICLE 40. The law may, on grounds of national interest, establish special restrictions and prohibitions on the acquisition and transfer of specified kinds of property either by reason of its nature, or condition, or situation within the country.

ARTICLE 41. The property of the state, of public institutions, and of native communities is inalienable and may be transferred solely by public title in the manner and form prescribed by law.

ARTICLE 42. All mineral property belongs to the state. Its possession or use may be conceded only in the manner and under the conditions determined by law.

ARTICLE 43. Useful inventions are the exclusive property of their discoverers, unless they voluntarily agree to sell the rights, or unless the power of eminent domain is invoked. Those who merely introduce inventions shall enjoy the privileges established by law.

ARTICLE 44. The state may by law take over or nationalize transportation by land, sea, or air, or any other public utilities belonging to private individuals, after first paying due compensation.

ARTICLE 45. The nation recognizes freedom of commerce and industry, subject to requirements and guaranties established by law for their exercise. Such laws may determine or authorize the government to fix limitations and reservations on the conduct of industry, when public necessity or security requires it, but in no case may such restrictions assume a personal or confiscatory character.

ARTICLE 46. The nation guarantees freedom of labor, permitting the free exercise of any office, industry, or profession in so far as not contrary to public morals, safety, or security. The law will determine which liberal professions require licenses for their practice, the conditions for securing them, and the proper authorities for granting them.

ARTICLE 47. The state will legislate on the general organization and security of industrial labor and on the protection of life, safety, and health in industry. The law will fix maximum hours of labor and minimum wages in industry, with reference to the age, sex, and character of the workers and to the circumstances and needs of the various parts of the country. Indemnification for accidents in industrial labor is obligatory and will be rendered effective in the manner determined by law.

ARTICLE 48. Conflicts between capital and labor shall be subject to compulsory arbitration.

ARTICLE 49. The law will establish the form of organization for the tribunals of conciliation and arbitration for the solution of differences between capital and labor and the requirements and conditions for making their awards effective.

ARTICLE 50. Monopolies and trusts in industry and commerce are forbidden. The law will fix the penalties for all violations. The state alone may by law establish monopolies and exclusive privileges, and then only for the national interest.

ARTICLE 51. The law will fix the maximum rate of interest for loans. Any agreement to the contrary is void, and those violating its provisions will be punished.

ARTICLE 52. Gambling is absolutely prohibited within the republic, and establishments in which it is practiced will be closed. Betting at public exhibitions is permissible.

ARTICLE 53. Primary instruction is obligatory for all children 6 years of age and above. The nation guarantees free instruction. There shall be at least one school of primary instruction for boys and one for girls in the capital of each district and one school of secondary grade for each sex in each provincial capital. The state shall provide secondary and advanced instruction and shall foster institutions for the sciences, arts, and letters.

ARTICLE 54. The teaching profession is a public career in the various grades of public instruction and is entitled to the remuneration provided by law.

ARTICLE 55. The state will establish and promote public hygiene and charity, institutes, hospitals, and asylums, and will watch over the protection and aid of infants and the dependent classes.

ARTICLE 56. The state shall foster institutions of social welfare, savings banks, insurance companies, and cooperative producers' and consumers' associations which have for their object the improvement of the conditions of the people.

ARTICLE 57. In circumstances of extraordinary social necessity laws may be passed or the executive authorized to adopt measures for reducing the cost of necessities of life, but in no case may goods be expropriated without due compensation.

ARTICLE 58. The state will protect the native race and will enact special laws for its development and progress as they are needed. The nation recognizes the legal existence of the native communities and the law will fix their rights.

TITLE V.

PERUVIANS.

ARTICLE 59. The following are native Peruvians: (1) Those born within the territory of the republic; (2) children of Peruvian fathers or mothers, born in foreign countries, provided their names have been inscribed in the civil register by act of their parents during their minority, or by their own act after having attained majority or legal capacity.

ARTICLE 60. The following are naturalized Peruvians: Foreigners more than 21 years of age who have been residents in Peru for more than 2 years and who have had their names inscribed in the civil register in the manner prescribed by law.

ARTICLE 61. Every Peruvian is obliged to serve the republic with his person and his property in the manner and to the extent fixed by law. Military service is compulsory for every male citizen. The law will determine the manner in which this service shall be performed and the cases of exemption.

TITLE VI.

CITIZENSHIP AND ELECTORAL RIGHTS AND GUARANTIES.

ARTICLE 62. All male Peruvians 21 years of age, and above, and married Peruvians, though below that age, are active citizens.

ARTICLE 63. The exercise of citizenship is suspended: (1) through incapacity as determined by law; (2) by conviction and imprisonment for crime; (3) by judicial sentence imposing this penalty during the period of the sentence.

ARTICLE 64. The right of citizenship is lost through naturalization in another country, but may be recovered by reinscription in the civil register, conditioned upon residence in the republic.

ARTICLE 65. Any citizen may fill any public office, if he complies with the conditions imposed by law.

ARTICLE 66. The right of suffrage is enjoyed by active citizens who can read and write. No one may exercise the right of suffrage, or be elected president of the republic, senator, or deputy, who is not inscribed in the military register.

ARTICLE 67. The suffrage shall be exercised in elections in accordance with the electoral law, based upon the following principles: (1) inscription in a permanent register; (2) direct popular vote; (3) jurisdiction by the judicial power as the law shall determine to guarantee electoral procedure, the supreme court having the power to take cognizance of proceedings and to impose the responsibilities for which there may be cause in the cases covered by the law.

TITLE VII.

THE FORM OF GOVERNMENT.

ARTICLE 68. The government of Peru is republican, democratic, and representative, and is founded on unity.

ARTICLE 69. The public functions shall be exercised by those intrusted with the legislative, executive, and judicial powers; no one of which may exceed the limits prescribed by this constitution.

ARTICLE 70. The renewal of the legislative power shall be total and shall coincide with the renewal of the executive. The term of office of both of these powers shall be 5 years. Senators, deputies, and the president of the republic shall be elected by direct popular vote.

TITLE VIII.

THE LEGISLATIVE POWER.

ARTICLE 71. The legislative power shall be exercised by the congress as prescribed by this constitution.

ARTICLE 72. The legislative power shall consist of a senate composed of 35 senators and a chamber composed of 110 deputies. This number may not be changed save by constitutional amendment. An organic law will determine the departmental and provincial districts and the number of senators and deputies to be elected by each district.

ARTICLE 73. Vacancies in the congress shall be filled by special elections. The one elected to a vacancy in the senate or chamber of deputies shall remain in office during the rest of the legislative period.

ARTICLE 74. The following qualifications are requisite for election as national or regional deputy: (1) Peruvian citizenship by birth; (2) active citizenship; (3) 25 years of age; (4) birth in the department to which the province belongs, or 2 years residence there, duly proved.

ARTICLE 75. The qualifications for senator are as follows: (1) Peruvian citizenship by birth; (2) active citizenship; (3) 35 years of age.

ARTICLE 76. The following may not be elected either as senator for any department, or as deputy from any province: (1) the president of the republic, ministers of state, prefects, subprefects, and governors, unless they have resigned their office two months before the election; (2) the judges and solicitors of the supreme court, of the superior courts, and of the courts of the first instance; (3) public employees who may be directly removed by the executive, and members of the military forces in service at the time of the election; (4) archbishops, bishops, ecclesiastical governors, capitular vicars, and ecclesiastical judges within the departments or provinces of their respective dioceses, and curates for the provinces to which their parishes belong.

ARTICLE 77. Members of the legislative branch are ineligible to all public employment in national or local administration. Employees of the public charity or of the societies dependent in any way upon the state are included in this ineligibility.

ARTICLE 78. The congress shall meet in ordinary session every year on July 28, with or without call, and shall function at least 90 days in the year and at most 120 days. The congress shall be called in extraordinary session by the executive whenever he deems it necessary. In case the budget has not been approved, the ordinary sessions of congress may not be adjourned until the maximum period. The extraordinary sessions shall end when the object of their convocation shall have been obtained, and in no case may they continue more than 45 working days. Each of the extraordinary sessions of congress shall have the same powers as the regular sessions, but preference shall be given to the matters enumerated in the call for the special session.

ARTICLE 79. Sixty per cent of the members of each chamber shall be requisite for the opening of congress.

ARTICLE 80. Senators and deputies are inviolable in the performance of their functions and may not be accused or arrested without prior authorization of the chamber to which they belong within the period extending from one month before the opening of the sessions to one month after their adjournment, except *in flagrante delicto*, in which case they shall be placed at once at the disposition of their respective chambers.

ARTICLE 81. The seats of senators and deputies shall be vacated to permit of taking any office, employment, or benefit to which nomination, presentation, or appointment is made by the executive. The only exception shall be the offices of minister of state, and membership in extraordinary commissions of an international character with the approval of the appropriate chamber, providing further that the absence of a deputy or senator on such commission shall not extend beyond one legislative term. Honorary offices may also be accepted from the executive.

ARTICLE 82. Deputies and senators may be re-elected, and only in that case may their offices be resigned.

ARTICLE 83. The powers of congress are as follows: (1) to pass new laws, and to interpret, modify, and repeal existing laws; (2) to open and close its sessions within the time fixed by law; (3) to designate the place of its sessions and if armed forces are required to determine the number and the place; (4) to examine violations of the constitution and to take proper measures to fix responsibility for them; (5) to impose taxes in conformity with the provisions of article 7; to repeal existing taxes, to approve the budget, and approve or disapprove the account of expenditures presented by the executive in accordance with article 129; (6) to authorize the executive to negotiate loans pledging the national revenue, and to designate funds for their amortization; (7) to acknowledge the national debt and to determine measures for its consolidation and amortization; (8) to create or abolish public offices and to determine their salaries; (9) to establish the fineness, weight, kind, and denomination of the coinage and also of weights and measures; (10) to regulate imposts; (11) to authorize the executive to enter into contracts respecting the property or income of the state which shall be submitted to the legislative branch for approval; (12) to proclaim the election of the president of the republic and to choose him in the cases designated in article 116 of the constitution; (13) to accept or refuse the resignation of the president; (14) to determine the incapacity of the president in the cases referred to in section 1 of article 115; (15) to approve or disapprove nominations which in accordance with the law shall be made by the executive for generals in the army, admirals and vice-admirals in the navy, and colonels and naval captains; (16) to grant or withhold consent for the admission of foreign troops into the territory of the republic; (17) to declare war upon the initiative or prior information of the executive, and to request him at the opportune time to negotiate peace; (18) to ratify or disapprove treaties of peace, concordats, and other agreements entered into with foreign governments; (19) to make the regulations necessary for the exercise of the right of patronage; (20) to grant amnesties and pardons; (21) to pass the laws and resolutions referred to in article 36; (22) to decide in each ordinary session, or if necessary, in extraordinary session, what land and naval forces must be maintained by the state; (23) to establish the divisions and boundaries of the national territory; (24) to grant rewards to towns, corporations, or individuals for eminent services rendered to the

nation in conformity with article 85; (25) to approve or disapprove the resolutions of the regional assemblies vetoed by the executive.

ARTICLE 84. To exercise the powers enumerated in section 24 of article 83 requires a two-thirds vote in each chamber.

ARTICLE 85. The congress may not authorize personal rewards chargeable upon the treasury, nor increase the salaries of public employees except upon the initiative of the government.

ARTICLE 86. The congress each year shall vote the general budget of the republic for the coming year. On no account may the government be carried on without a budget, and if for any reason the budget is not completed before the beginning of the new year, the congress, whether in ordinary session or upon special call, shall determine that until the budget be definitely approved, the budget of the preceding year or the one proposed by the government to supersede it shall govern provisionally by twelfths.

ARTICLE 87. The congress shall call the general elections and each chamber a special election in case of vacancies in its membership whenever the executive fails to do so.

ARICLE 88. The preparatory committees of both chambers, after having chosen their bureaus in the manner determined by the rules of procedure, shall open the election returns and validate and approve the votes for president of the republic and shall proclaim as elected the citizen who has obtained the majority of votes, but in no case may the votes cast for president in the election of the incorporated representatives be annulled. A quorum for this session shall consist of 60 per cent of the total membership of each chamber. The chambers shall establish their preparatory committees one month before the opening of congress when a new congress has been elected.

ARTICLE 89. The congress shall be installed by the new president of the republic, who shall take the oath of office in the same session.

ARTICLE 90. When the congress elects the president it shall be accomplished in a single session. If a tie results it shall be decided by lot.

TITLE IX.

THE LEGISLATIVE CHAMBERS.

ARTICLE 91. Bills shall be initiated, discussed, and passed in each chamber in conformity with the rules of procedure of the chambers.

ARTICLE 92. Each chamber shall have power to organize its secretariat, appoint its employees, prepare its budget, and control its expenses and internal control.

ARTICLE 93. The chambers shall meet jointly only to open their sessions, to ratify treaties, and to perform the electoral functions which the constitution assigns to the congress.

ARTICLE 94. The presidency of the congress shall alternate between the presidents of the two chambers, in accordance with the rules of the chambers.

ARTICLE 95. The chamber of deputies shall have the right to impeach before the senate the president of the republic, the members of either chamber, the ministers of state, and the judges of the supreme court, for violations of the constitution and for every offense committed in the exercise of their functions which is made punishable by law.

ARTICLE 96. The president of the republic may not be impeached during his term of office, except in case of treason, attack on the form of the government, dissolution of the congress, or interference with its meetings or suspension of its functions.

ARTICLE 97. The senate shall have power: (1) to determine whether or not there is ground for action on the accusations presented by the chamber of deputies. If so, the accused shall be suspended from office and subjected to trial as provided by law; (2) to decide conflicts of jurisdiction between the supreme court and the executive; (3) to ratify or disapprove nominations of diplomatic representatives and members of the council of state.

ARTICLE 98. The chambers shall have power in regular or special session to insure the observance of the rights and guaranties established by the constitution and laws and to hold those violating them responsible.

ARTICLE 99. The chambers may appoint parliamentary committees of investigation and information. Every representative may demand from the ministers of state the data and information necessary for the exercise of his duties.

ARTICLE 100. Each chamber shall elect every year one or more committees nominated by the president which, shall act during the recess of the chambers on matters that are left pending.

TITLE X.

THE ENACTMENT AND PROMULGATION OF LAWS.

ARTICLE 101. The following have the right of initiative in legislation: (1) the senators and deputies; (2) the executive; (3) the regional legislatures; (4) the supreme court in judicial matters.

ARTICLE 102. Upon approval of a bill in either chamber it shall pass to the other for consideration and vote. If the revising body makes any amendments these shall pass through the same steps as the bill itself.

ARTICLE 103. Whenever one of the chambers disapproves or amends a bill passed by the other, the chamber of origin must in order to sustain its original proposal, repass it by a vote of two-thirds of its total membership. The revising chamber, in order to sustain its opposition or modification of the bill, must in like manner give a two-thirds vote. If such a vote is given the law can not pass; if not, the law will stand approved as voted and sustained in the chamber of origin.

ARTICLE 104. When a law has been approved by the congress it shall be sent to the executive for promulgation and execution. If the executive has comments to make, he shall present them to the congress within 10 days.

ARTICLE 105. The law having been reconsidered in both chambers with the comments of the executive, if it again receives their approval it shall be effective and must be promulgated and enforced. If it is not approved anew, the law may not be considered again until the following legislature.

ARTICLE 106. If the executive fails to promulgate and order the enforcement of the law, and does not return it with his comments within the time fixed in article 104, the law shall become effective and shall be promulgated by the president of the congress, who shall have it published in some periodical for its execution. For this purpose the president of the chamber in which the law was approved shall be considered as president of the congress.

ARTICLE 107. The executive shall not have power to comment on the resolutions and laws of the congress passed by virtue of the powers enumerated in sections 2, 3, 12, 13, and 14 of article 83.

ARTICLE 108. The sessions of the congress and of the chambers shall be public. They may be secret only in cases provided in the rules of the chambers. In no case may there be a secret session for the discussion of economic

affairs. Voting shall be by roll call on any matter which directly involves the revenues of the nation.

ARTICLE 109. For the interpretation, amendment, or repeal of laws the same formalities shall be observed as for their enactment.

ARTICLE 110. The congress in enacting laws shall employ the following formula: "The congress of the republic of Peru [here follows the preamble], has enacted the following law [here follow the provisions of the law]: Let it be communicated to the executive, so that he may take the necessary steps for its enforcement." The executive in promulgating and ordering execution of the laws shall use the following formula: "The president of the republic, inasmuch as the congress has enacted the following law [here follows the law], therefore orders it to be printed, published, circulated, and duly observed."

TITLE XI.

THE EXECUTIVE POWER.

ARTICLE 111. The chief of the executive power shall be known as the president of the republic.

ARTICLE 112. The qualifications for the office of president of the republic are as follows: (1) Peruvian citizenship by birth; (2) active citizenship; (3) 35 years of age and 10 years residence in the republic.

ARTICLE 113. The president shall remain in office for a term of 5 years and may not be reelected, except after an equal period of time.[1]

ARTICLE 114. The salary of the president may not be increased during his term of office.

ARTICLE 115. The presidency of the republic becomes vacant in addition to the case of death: (1) through permanent physical or mental capacity of the president duly when declared by congress; (2) by acceptance of his resignation; (3) by a judicial decree which pronounces him guilty of the offenses enumerated in article 96.

ARTICLE 116. Only in case of death or resignation of the president of the republic shall the congress elect within 30 days the citizen who shall complete the presidential term, the council of ministers governing during the interim.

ARTICLE 117. The congress shall likewise elect the citizen who shall complete the presidential term in cases of vacancy enumerated in article 115. The council of ministers shall govern in the interim when there is a temporary incapacity as provided in article 118.

ARTICLE 118. The exercise of the presidency shall be suspended: (1) through the president taking personal command of the public forces; (2) through temporary incapacity when so decided by the congress; (3) through being brought to trial in the cases established in article 96.

ARTICLE 119. No person filling the presidential office may be elected for the period immediately following.[1]

ARTICLE 120. Neither may the ministers of state nor members of the military in active service be chosen president unless they shall have resigned their office 120 days prior to the election.

ARTICLE 121. The president of the republic shall have power: (1) to represent the state at home and abroad; (2) to call general and special elections; (3) to preserve the internal order and external security of the republic in conformity with the laws; (4) to call general and special sessions of the congress; (5) to be present at the opening of the congress and to

[1] For amended form see supra p. 30.

present a message on the state of the republic and on the measures and reforms which he considers advisable; (6) to take part in the enactment of laws in conformity with this constitution; (7) to promulgate and execute the laws and other resolutions of the congress and to issue decrees, ordinances, regulations, and instructions for their better execution; (8) to give the necessary orders for the collection and the disbursement of public revenues in conformity with the law; (9) to demand of the judges and tribunals the prompt and exact administration of justice; (10) to exact strict compliance with the judgments and findings of the tribunals and judges; (11) to organize the land and naval forces; to assign and dispose of them for the services of the republic; (12) to direct diplomatic negotiations and enter into treaties, placing in these the express conditions that they shall be submitted to the congress for the exercise of the power granted in section 18 of article 83; (13) to receive foreign ministers and admit foreign consuls; (14) to appoint and remove ministers of state and the diplomatic agents in accordance with section 3, article 97; (15) to grant leaves of absence and pensions in conformity with the law; (16) to exercise the ecclesiastical patronage in accordance with the laws and existing practices; (17) to nominate as archbishops and bishops, with the approval of congress, those who have been chosen in accordance with the law; (18) to appoint as deans and canons of the cathedrals, as curates, and holders of other ecclesiastical benefices priests of Peruvian nationality, in accordance with the laws and existing practices; (19) to enter into concordats with the Holy See in conformity with instructions given by the congress; (20) to approve or disapprove conciliar decrees and pontifical bulls, briefs, and rescripts, with the consent of the congress; and in contentious matters only after having first heard the supreme court of justice; (21) to fill all vacant offices under the power of appointment vested in him by the constitution and laws.

ARTICLE 122. The government alone may, in conformity with the law, grant old age and retiring allowances, and pensions, without any possibility of intervention by the legislature.

ARTICLE 123. The president may not leave the territory of the republic during his term of office without permission of the congress.

ARTICLE 124. The president may not take personal command of the public forces without the permission of the congress. In case he assumes command he shall have only the powers of commander-in-chief, subject to the military laws and ordinances, and shall be responsible according to their provisions.

TITLE XII.

THE MINISTERS OF STATE.

ARTICLE 125. The conduct of the affairs of public administration shall be intrusted to the ministers of state, whose number shall be designated by law.

ARTICLE 126. The qualifications for minister of state shall be the same as for deputies.

ARTICLE 127. The orders and decrees of the president shall be approved by each minister in his respective jurisdiction and shall be signed by him, otherwise they shall not be considered effective.

ARTICLE 128. The ministers of state together constitute the council of ministers, whose organization and functions shall be determined by law. There may not be temporary ministers. In case of necessity the president may intrust to one minister the conduct of another department because of

the incapacity of its chief, but this charge may not be prolonged beyond the time fixed by law.

ARTICLE 129. Each minister shall present at the time of the convening of the congress in regular session a report setting forth the conditions of the various matters under his charge, and at all times such information as may be demanded of him. The minister of finances shall furthermore present the general accounts of the republic for the preceding year and the budget for the following year with the approval of the council of ministers. The presentation of both of these documents shall occur promptly in August of each year, and its omission shall make the entire cabinet responsible.

ARTICLE 130. The ministers with approval of the president of the republic may present to the congress at any time proposals for laws which they deem desirable; they may assist at the debates in the chambers but must retire before the vote.

ARTICLE 131. The functions of deputy or senator shall remain suspended during the time that the incumbent occupies the position of minister.

ARTICLE 132. The ministers are jointly responsible for resolutions adopted by the council of ministers if they do not withhold their votes, and individually for the acts connected with their departments.

ARTICLE 133. Ministers against whom either chamber has passed a vote of lack of confidence may not continue in the discharge of their offices.

TITLE XIII.

THE COUNCIL OF STATE.

ARTICLE 134. There shall be a council of state composed of 7 members nominated with the deliberative vote of the council of ministers and with the approval of the senate. The law will determine the cases in which the government shall receive its opinion, and those in which it may not proceed against it.

TITLE XIV.

THE INTERNAL ADMINISTRATION OF THE REPUBLIC.

ARTICLE 135. The republic is divided into departments and littoral provinces. The departments are divided into provinces and these into districts. The determination of their respective boundaries shall be by law. The creation of new departments and provinces must be approved by the legislature in the same manner as provided for constitutional amendments.

ARTICLE 136. There shall be prefects in the departments and littoral provinces; subprefects in the provinces; governors in the districts and lieutenant-governors where necessary. The prefects shall be immediately subordinate to the executive; the subprefects to the prefects; the governors to the subprefects; and the lieutenants-governor to the governors.

ARTICLE 137. The prefects and subprefects shall be appointed by the executive; the governors by the prefects, and the lieutenant-governors by the subprefects. The powers and the term of office of these officers shall be determined by law.

ARTICLE 138. The officials in charge of the security police and of the public order are immediately dependent upon the executive, who shall appoint and remove them in conformity with the law.

ARTICLE 139. Every political official who shall have been duly declared guilty for malfeasance in office shall be disqualified from holding any other public office for 4 years, in addition to the penalties of another nature to which he may be subject.

TITLE XV.

REGIONAL CONGRESSES.

ARTICLE 140. There shall be three regional legislatures, corresponding to the north, center, and south of the republic, with deputies chosen by the provinces at the same time as the national representatives. These legislatures shall hold each year a session of 30 days without prorogation. They may not concern themselves with personal affairs in any form. Their resolutions shall be communicated to the executive for his enforcement. If he considers them incompatible with general laws or with the national interest, he shall submit them with his objections to the congress, which shall proceed with them in the same manner as with vetoed laws.

TITLE XVI.

MUNICIPAL ADMINISTRATION.

ARTICLE 141. Municipal councils shall be established in the places indicated by law, which shall also fix their powers, responsibilities, the qualifications for their members, and the method of electing them.

ARTICLE 142. The provincial councils are autonomous in the management of the matters intrusted to them. The imposition of local taxes shall be approved by the government.

TITLE XVII.

THE PUBLIC FORCES.

ARTICLE 143. The object of the public forces is to maintain the rights of the nation abroad and the maintenance of the laws and order at home. Military discipline shall be regulated by military laws and orders.

ARTICLE 144. The public forces consist of the army and navy and shall be organized by law. The size of the army and navy and the number of generals and chiefs shall be determined by law. The executive may not propose nor the congress approve promotions, save in cases of vacancies.

ARTICLE 145. The public forces may not be increased nor diminished except in conformity with the law. Impressment is a crime which is actionable by all before the courts and before congress as against the one ordering it.

TITLE XVIII.

THE JUDICIAL POWER.

ARTICLE 146. There shall be in the capital of the republic a supreme court, in the capitals of the departments and in the provinces superior courts and judges of first instance respectively, as determined by the congress, and in all towns justices of the peace. The law will determine the organization of the judicial power, the form of the appointments, and the conditions and qualifications to which they shall be subject.

ARTICLE 147. The judges and solicitors of the supreme court shall be chosen by the congress from among 10 candidates proposed by the government in accordance with the law.

ARTICLE 148. The judges and prosecuting officers of the superior courts shall be appointed by the executive from a double list of 3 names each submitted by the supreme court; and the judges and prosecuting officers of the courts of first instance from a double list of 3 names prepared by the respective superior courts in conformity with the law.

ARTICLE 149. The members of the judiciary may not be appointed by the executive to fill any political offices, excepting only the magistrates of the supreme court, who may be appointed ministers of state.

ARTICLE 150. The supreme court shall have jurisdiction to decide controversies arising between the executive and the provincial councils in the exercise of their autonomous functions.

ARTICLE 151. The supreme court shall exercise authority and supervision over all the tribunals and judges and judicial functionaries of the republic, as well as over notaries and the registers of property, in regard to both judicial procedure and discipline, and shall have the power in conformity with the law to punish, suspend, and remove from office the superior judges, justices, and other functionaries.

ARTICLE 152. The judicial career shall be regulated by a law which shall fix the conditions of promotion. The judges in the courts of the first and second instance shall have their names approved by the supreme court every 5 years.

ARTICLE 153. The failure of the supreme court to approve the name of a judge shall not deprive him of his right to the emoluments acquired in conformity with the law.

ARTICLE 154. Publicity is essential in trials. The tribunals may discuss in secret, but the vote shall be given aloud and publicly. The judgments shall be explained and shall express the law or the principles on which they rest.

ARTICLE 155. Trials by commission are forbidden. No power or authority may assume jurisdiction of or intervene in causes pending before another power or authority, nor revive proceedings which have been terminated.

ARTICLE 156. Military justice may not for any purpose extend its jurisdiction over persons who are not in military service unless it be in case of national war.

ARTICLE 157. Popular action may be brought against judges and justices for prevarication, bribery, abridgment or suspension of judicial forms, illegal procedure against the individual guaranties, and improper prolongation of criminal trials.

TITLE XIX.

TRANSITORY PROVISIONS.

ARTICLE 158. This constitution will govern in the republic from the day of its promulgation, without the necessity of being sworn to.

ARTICLE 159. The existing currency shall be subject to the laws by which it was created and to those which may be passed, provided always the metallic guaranties shall be sustained until the redemption of the issue.

ARTICLE 160. Amendments to the constitution shall be passed only in regular sessions, but they shall not become effective unless ratified in another regular legislative session, it being requisite for the passage of the amendment in both legislatures that there be a two-thirds vote of the members of each chamber.

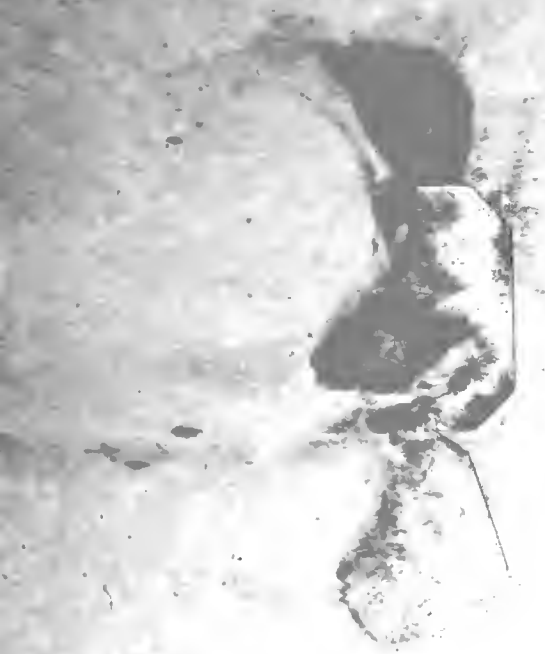
ARTICLE 161. In 1924 congress shall meet on October 12.

Passed in the hall of sessions of the national assembly in Lima, on the 27th day of the month of December, 1919.

Wherefore I order it printed, published, and circulated and duly observed. Done in the capitol at Lima on the 18th of January, 1920.

A. B. LEGUÍA.

INDEX



p 54
55

61 fomento

82

96 leis